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No. 82-940

In The
Supreme Court of the United States
October Term, 1982

ELIZABETH ANDERSON HISHON,
Petitioner,

vs.

KING & SPALDING,
Respondent.

On Certiorari To The United States Court of Appeals For The Eleventh Circuit

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

Date	Proceedings
1980	
Feb. 27	Complaint with Exhibit A and B filed.
28	Summons issued and delivered to USM.
Mar. 12	Marshal's return of service executed 3-11-80, filed.
25	Order transferring action from Judge O'Kelley to Judge Edenfield filed. Cy. to counsel.
31	ANSWER, filed.

Deft's motions to dismiss pltf's complaint w/ exhibits & brief, filed.

Deft's notice to take deposition of pltf, filed.

Apr. 2 Letter from pltf's counsel requesting in chambers conference, filed.

4 HEARING on question as to how discovery should proceed. Court *directed* that discovery proceed on the Title 7 issue only. Parties allowed 90 days to complete discovery. Counsel to prepare order. Court directed parties to prepare order that all pleadings other than complaint & answer be SEALED, that includes all pleadings to date & in the future. (all pleadings except complaint & answer SEALED 4-9-80).

18 Letter dated 4-16-80 to Hamilton Lokey from Emmet J. Bondurant RE: interrogatories. Pretrial instructions mailed to counsel.

24 ORDER that parties are granted 90 days in which to complete discovery limited to the threshhold issue, pltf have 30 days after completion of discovery to file brief or other response to deft's motions to dismiss directed to the threshhold issue & deft have 30 days thereafter to file response & that all other matters are stayed & deferred until further order of the court, c.c.

ORDER that all documents, responses to interrog. or requests for admissions, transcripts, depositions, all pleadings, aff'ids & briefs other than pltf's complaint & deft's answer shall be maintained in strictest confidence & ***FILED UNDER SEAL*** pending further order of this Court & after date of this order, cc.

May 12 Proposed consent order for extension of time for deft to respond to pltf's interrog. & notice

to produce, rec'd. (no extension needed as interrog. in NE's office & not rec'd in Clerk's office til 5-16-80).

16 INTERROG. of pltf. (Vault 118).

FIRST notice to produce of pltf. (Vault 118). MOTION of Equal Employment Opportunity Commission for leave to participate as amicus curiae w/memo & proposed order. (Vault 118).

27 RESPONSE of deft to pltf's first notice to produce. (Vault 118).

MEMO of deft in opposition to motion of Equal Opportunity Commission to participate as amicus curiae. (Vault 118).

RESPONSES & OBJECTIONS of deft to certain of pltf's first interrog. (Vault 118).

June 09 REPLY memo by EEOC in support of mot. to participate as amicus curiae. (Vault 118).

16 SUBMITTED ON MOTION OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE.

23 MOTION of pltf to compel deft to produce documents & to answer w/brief.

30 ORDER DENYING in part & GRANTING in part EEOC's motion to participate as amicus curiae, cc 7-1-80.

July 14 LETTER dated Jul. 7, 1980 form Gerald F. Handley re: ext. to 7-17-80 for response to motion to compel.

Orig. File to NE

17 SUBMITTED ON PLTF'S MOTION TO COMPEL DEFT TO PRODUCE DOCUMENTS & TO ANSWER INTERROGS.

21 RESPONSE of deft to the motion of Equal Employment Opport. Commiss. for modifica-

tion of Court order Granting leave to participate as Amicus Curiae. NE.

17 BRIEF of defts in opposition to pltf's motion to Compel. NE.

MOTION of Equal Employment Opport. Comm. for Modification of Court Order Granting Leave to Participate as Amicus Curiae w/Proposed order. NE.

23 SUBMITTED ON MOTION OF EQUAL EMPLOYMENT OPPORT. COMM. FOR MODIFICATION OF COURT ORDER GRANTING LEAVE TO PARTICIPATE AS AMICUS CURIAE.

30 ORDER DENYING EEOC's motion to modify the court's order of June 30, 1980. (c to c) NE

31 PRE TRIAL INST. MAILED.

MOTION of pltf to ext. time for disc. w/approval to Sept. 8, 1980. (c to c).

Nov. 26 ORDER DISMISSING action as court concludes that it has no subject matter jurisdiction of pltf's claim, cc & FOD 11-28-80.

JUDGMENT ENTERED for the deft & against the pltf, cc & EOD 11-28-80.

Dec. 1 NOTICE OF APPEAL (Pltf's). (Bond & Fees paid) c:c cert'd c. ntc & dkt:USCA 12/3.

Dec. 15 Letter dated 12/8/80 from USCA requesting record "Forthwith".

1981

Jan. 2 Letter dated 12/30/80 from USCA requesting record "Forthwith".

Jan. 8 RECORD ON APPEAL TO USCA, RRR.

ELEVENTH CIRCUIT COURT OF APPEALS

1/13/81 Motion of EEOC for access to the record on appeal.

1/20/81 Appellee's opposition to motion of EEOC for access to the record on appeal.

2/19/81 Order that motion of amicus curiae, EEOC to have access to the record is CARRIED WITH THE CASE.

3/24/81 Appellee's motion to place all briefs relative to this appeal under protective order.

3/30/81 Order granting appellee's motion to place all briefs relative to this appeal under seal.

1/6/81 Motion of EEOC for leave to participate in oral argument amicus curiae on independent time.

1/11/82 Response of appellee, King & Spalding, to motion of EEOC to participate in oral argument as amicus curiae on independent time.

1/14/82 Order granting motion of EEOC for leave to participate in oral argument as amicus curiae on independent time.

1/18/82 Letter of appellee regarding clarification of a matter which arose during oral argument in this case.

2/1/82 Motion of appellant for leave to file letter in response to letter of appellee.

2/4/82 Response of appellee to appellant's motion to file with the court her letter dated 1/25/82.

2/18/82 Order granting motion of appellant for leave to file letter in response to letter of appellee.

7/16/82 Motion of amicus curiae, EEOC, for leave to file a brief in support of the petition for rehearing en banc.

8/4/82 Order granting motion of EEOC for leave to file a brief as amicus curiae in support of appellant's petition for rehearing en banc.

COMPLAINT

The complaint of the plaintiff for damages and injunctive relief to redress unlawful acts of sex discrimination on the part of the defendant, in violation of Title VII of the Civil Rights Act of 1964 (42 U. S. C. §§ 2000e *et seq.*), and for other relief, respectfully alleges the following facts:

1.

Plaintiff Elizabeth Anderson Hishon is a female citizen of the United States and the State of Georgia and is actively engaged in the practice of law in Atlanta, Georgia, as a member in good standing of the State Bar of Georgia.

2.

(a) Defendant King & Spalding is a general partnership engaged in the practice of law in interstate commerce with its principal offices in Atlanta, Georgia, and an office in Washington, D. C., from which the defendant represents on a national basis many clients that are also engaged in interstate commerce.

(b) King & Spalding consists of 52 partners and employs approximately 50 other lawyers known as "associates," and more than 50 non-legal personnel in secretarial and other positions, and is an "employer" within the meaning of 42 U. S. C. § 2000e(b).

(c) Defendant King & Spalding is one of Atlanta's oldest and largest law firms, that traces its origins and continuing existence under different names to a firm that was founded in the 1870's under the name "King & Spalding"; during the 100 year history of the firm, King &

Spalding has never admitted a woman to partnership in the firm.

3.

Jurisdiction and venue of Count One of this action is conferred upon this Court by Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-5(f) (3), and by 28 U. S. C. § 1331; jurisdiction of Count Two is conferred by the Equal Pay Act, 29 U. S. C. § 216(b) and 28 U. S. C. § 1337; the Court has pendent jurisdiction of Count Three of the complaint.

COUNT ONE

4.

Defendant has unlawfully discriminated against plaintiff with respect to her compensation, terms, conditions and privileges of employment and employment opportunities because of plaintiff's sex in violation of §§ 703(a) (1) and (2), 704(a) of Title VII of the Civil Rights Act of 1964 (42 U. S. C. §§ 2000e-2 (a)(1) and (2), 2000e-3)), as more fully set forth in the succeeding paragraphs of Count One of her complaint.

5.

Plaintiff is a graduate of Wellesley College, from which she received a bachelor of arts degree in 1966, and of the Columbia University School of Law, from which she graduated with a juris doctor degree in 1972. Throughout her academic career, plaintiff's academic excellence was recognized by the receipt of various honors, including her designation as a Harlan Fiske Stone Scholar at Columbia University Law School.

6.

Plaintiff was admitted to practice before the Supreme Court, Court of Appeals and Superior Courts of Georgia in 1972, and has been a member in good standing of the State Bar of Georgia since that date; plaintiff has also been active in the affairs of the organized Bar as a member of the Atlanta, Georgia and American Bar Associations, and has served as Chairman of the State Bar Lawyer Referral Committee, and is a member of the Lawyers Club of Atlanta.

7.

Prior to plaintiff's graduation from the Columbia University Law School in 1972, plaintiff received approximately ten offers of employment from outstanding law firms, in New York and Atlanta, including an offer of employment from defendant King & Spalding.

8.

At the time of her initial interview and recruitment by King & Spalding in 1972, and continuously thereafter, King & Spalding has represented to plaintiff and to other law students, and young lawyers whom the firm was seeking to employ, that:

(a) King & Spalding employs association attorneys of generally high academic standing and professional promise usually upon graduation from law school or at some reasonable time thereafter.

(b) King & Spalding was committed to the employment of new lawyers as "associates" with the expectation that the associate lawyer will be promoted and become a

partner in the defendant firm on a fair and equal basis and within a reasonable period of time, which was represented to be after a period of 5-6 years' employment.

(c) King & Spalding will make annual evaluations of the associate's progress toward partnership and will truthfully advise the associate of the results of those evaluations.

(d) Associates who receive satisfactory evaluations from the firm will be promoted and made partners in the firm as a matter of course after the five or six year period of apprenticeship.

9.

In reliance upon the representations and assurances from the defendant described in paragraph 8 above, plaintiff accepted the offer of employment of defendant King & Spalding and thereafter continued in the employ of the firm as an attorney in the firm's real estate department from April 3, 1972, until her discharge on December 31, 1979.

10.

During the plaintiff's employment by the defendant law firm, plaintiff and the defendant firm received many letters from clients of the firm and memoranda and comments from partners complimenting plaintiff on the quality of her professional representation.

11.

Throughout the plaintiff's employment by the defendant law firm, and continuing as recently as the evaluation in approximately November 1976, defendant law firm

advised plaintiff at her annual evaluations that her work was entirely satisfactory, that she was at the top of the class of associates who were considered to be probable candidates for promotion to partnership, and that she had every reason to be optimistic as to her prospects for promotion to partnership; plaintiff was never told by the firm as a part of its evaluation process that he work was unsatisfactory or that she had failed to perform professionally at the expected level to become a partner in the firm.

12.

Despite the prior assurances that plaintiff had received from defendant, plaintiff was not promoted by the defendant at its annual meeting in May 1978; following that meeting, plaintiff was assured by partners in her department that, to the contrary, the quality of her work had been judged to be excellent, that the reasons for her failure to receive a promotion were not based on any deficiencies in her performance as a lawyer, or personally, and was further assured by the senior member of the defendant's management committee that she would again be considered for promotion to partnership at the next annual meeting of the defendant in May 1979.

13.

In May 1979, defendant failed and refused to promote plaintiff to the position of partner in the defendant law firm, and thereafter notified plaintiff of defendant's intention to terminate her employment on December 31, 1979, and failed and refused to give plaintiff the same salary increases and cost-of-living adjustments on the same

basis as such increases and adjustments were made by the defendant in the compensation paid to its other employee-attorneys.

14.

The actions of the defendant described in paragraphs 11, 12 and 13 above were not based upon any objective criteria or any documented deficiencies in the professional quality of plaintiff's work, which was at least equal to that of some of the male lawyers who were promoted to partnership during the seven years that plaintiff was employed by defendant.

15.

The actions of defendant in denying plaintiff's promotion, in withholding salary and cost-of-living adjustments, and ultimately in terminating plaintiff's employment constituted unlawful acts of discrimination against plaintiff because of her sex, in violation of Title VII of the Civil Rights Act of 1964, and were in furtherance of an established custom, practice and policy of defendant law firm that has existed for over 100 years of excluding women entirely from partnership, or, in the alternative, of applying to women lawyers as a class, and to plaintiff in particular, higher standards for promotion to partnership than King & Spalding has required of male lawyers.

16.

Defendant has unlawfully, and in violation of 42 U. S. C. §§ 2000e-2(a) (1), 2000e-2(a) (2) and 2000e-3:

(a) discriminated against plaintiff in terms, conditions, privileges, opportunities and compensation of her employment on account of her female sex;

(b) limited, segregated and classified her in ways which deprived and tended to deprive her of employment opportunities and otherwise adversely affected her status as an employee on account of her sex; and

(c) discriminated against her for opposing practices made unlawful by Title VII.

17.

Without limiting the generality of the foregoing allegations, these unlawful actions of sex discrimination by defendant against plaintiff have been accomplished by the following and other circumstances:

(a) Defendant failed and refused to offer plaintiff a promotion to partnership on and after May 25, 1979, despite her having performed all lawful and necessary requirements for attaining such status;

(b) Defendant failed and refused to give plaintiff a raise or a cost-of-living increase, or either, in salary on and after January 1, 1979, and continuously ever since;

(c) Defendant discharged plaintiff as its employee effective December 31, 1979; and in retaliation for her having exercised the legal and equitable rights granted by Title VII of the Civil Rights Act of 1964 by filing a charge with the Equal Employment Opportunity Commission as more fully alleged in paragraph 18 below, defendant attempted to coerce plaintiff to vacate the premises and abandon her work for clients before December 31, 1979, and withdrew an offer of settlement when she failed to comply with this demand:

(d) Defendant failed and refused to assign sufficient junior associates to work under plaintiff on matters for which she was given responsibility, and failed and refused to give plaintiff responsibility for matters that would require that she work closely with other associates, all to insulate plaintiff from other associates of the firm;

(e) Defendant failed and refused to give plaintiff work assignments that would contribute to her career advancement;

(f) To the extent that lawful and necessary criteria were used, defendant failed and refused to evaluate plaintiff's performance in the same manner that defendant evaluated the performance of its male employees;

(g) Defendant set and applied standards for partnership which adversely impacted female lawyers as a class (including plaintiff) and which were not and are not justified by any business necessity or even job-relatedness;

(h) Defendant set and applied standards for partnership to plaintiff as a female which were not applied to at least some of her male peers; and

(i) To the best of plaintiff's knowledge, defendant failed to take adequate affirmative action to eradicate the present effects of past and current discrimination practiced by the defendant law firm against female lawyers generally and to create a work environment which is at least equally conducive to the progress of female lawyers toward partnership as defendant provided for male attorneys.

18.

(a) On November 19, 1979, plaintiff filed a timely Charge of Discrimination to the Equal Employment Opportunity Commission ("EEOC") regarding the matters complained of herein, a true and correct copy of which is attached hereto as Exhibit A and is incorporated herein by reference.

(b) On November 29, 1979, the EEOC, in accordance with its administrative regulations, issued the Notice of Right to Sue to plaintiff, a true and correct copy of which is attached hereto as Exhibit B and is incorporated herein by reference.

(c) Efforts by the parties at conciliation have been unsuccessful, and further efforts at conciliation would be futile.

(d) This action has been instituted within the time prescribed by law.

19.

Plaintiff has been severely damaged professionally, emotionally and monetarily as a direct result of the unlawful acts of discrimination of defendant, for which she can be only partially compensated in an action at law for damages.

WHEREFORE, plaintiff respectfully prays that this Court: –

(a) Declare illegal the actions of defendant toward plaintiff as described in Count One of the complaint to have been violative of Title VII of the Civil Rights Act of 1964;

(b) Award plaintiff back pay from November 19, 1977, until the date of entry of judgment herein;

(c) Award plaintiff compensation for her future loss of earnings as a result of the defendant's unlawful acts in lieu of reinstatement and promotion to partnership;

(d) Award plaintiff her reasonable attorneys' fees, costs and expenses; and

(e) Grant plaintiff such other and further relief as may be just and proper in the premises, including, but not limited to, a permanent injunction against further acts of disparagement and discrimination by defendant by reason of her sex or exercise of rights granted by Title VII.

COUNT TWO

20.

Plaintiff hereby incorporates by reference the allegations of paragraphs 4 through 19 above as allegations of this paragraph 20 of Count Two of the complaint.

21.

On information and belief, plaintiff avers that defendant has wilfully discriminated in the payment of compensation on the basis of sex between plaintiff and male attorneys employed by the defendant in violation of the provisions of the Equal Pay Act amendments to the Fair Labor Standards Act, 29 U. S. C. § 206(d) (1).

22.

Plaintiff has given her written consent to the filing of this complaint in the verification attached hereto as required by 29 U. S. C. § 216(b).

WHEREFORE, plaintiff respectfully prays that:

(a) The Court declare the defendant's action with reference to the plaintiff to have been a wilful violation of the Equal Pay Act amendments, 29 U. S. C. § 206(d) (1); and

(b) The Court award plaintiff such damages as she may be shown by the evidence, after discovery, to have sustained or otherwise be entitled to, together with reasonable attorneys' fees and costs in conformity with 29 U. S. C. § 216(b).

COUNT THREE

23.

Plaintiff hereby incorporates by reference the allegations of paragraphs 4 through 22 above as allegations of this paragraph 23 of Count Three of the complaint.

24.

Defendant has breached the terms and conditions of its contract of employment with plaintiff which was fully performed on the part of the plaintiff.

25.

Because of defendant's breach of contract, plaintiff has been damaged in an amount which plaintiff believes will substantially exceed $100,000.

WHEREFORE, plaintiff respectfully prays that she have and recover judgment under Count Three of her complaint for the amount of damages as she may be shown by the evidence to have sustained as a result of the defend-

ant's breach of contract, the costs of this action, and such other and further relief as may be just.

/s/ Emmet J. Bondurant
/s/ Jeffrey M. Smith

Attorneys for Plaintiff

EXHIBIT A

E.E.O.C. Charge No.____

CHARGE OF DISCRIMINATION

TO: The Equal Employment Opportunity Commission

A. I, ELIZABETH ANDERSON HISHON, charging party, do hereby charge that:

CHARLES L. GOWEN
HUGHES SPALDING, JR.
JAMES M. SIBLEY
CHARLES H. KIRBO
GRIFFIN B. BELL
JOHN IZARD
POPE B. McINTIRE
KIRK M. McALPIN
FRANK C. JONES
RICHARD A. DENNY, JR.
HARRY C. HOWARD
WILLIAM H. IZLAR, JR.
R. BYRON ATTRIDGE
BRADLEY HALE
ROBERT W. HURST
ROBERT L. STEED
HENRY HALL WARE, III
DANIEL J. O'CONNOR, JR.
HUGH PETERSON, JR.
JOHN A. WALLACE
EDWARD J. HAWIE
JOHN C. STATON, JR.
DAVID LEE COKER
JOHN D. HOPKINS
A. FELTON JENKINS, JR.
G. LEMUEL HEWES
HORACE H. SIBLEY
CHARLES M. SHAFFER, JR.
W. DONALD KNIGHT, JR.

JOSEPH R. GLADDEN, JR.
JAMES H. WILDMAN
JOSEPH B. HAYNES
HERSCHEL M. BLOOM
MICHAEL C. RUSS
CHARLES H. BATTLE, JR.
WALTER W. DRIVER, JR.
RUSSELL R. FRENCH
GEORGE H. LANIER
LANNY B. BRIDGERS
CLARENCE HAVERTY RIDLEY
WILLIAM A. CLINEBURG, JR.
RICHARD G. WOODWARD
THEODORE M. HESTER
WILLIAM F. NELSON
JAMES A. RUBRIGHT, JR.
JOSEPH R. BANKOFF
JOHN TRAPNELL GLOVER
DONALD S. KOHLA
NOLAN C. LEAKE
RALPH B. LEVY
CHARLES H. TISDALE, JR.

and KING & SPALDING, a partnership, which employs more than 100 persons, and all of the prior and future partners in King & Spalding who acquiesce or acquiesced in the patterns, practice and employment decisions hereafter described,

Respondents, all of which individuals (and others) are partners in the law firm of King & Spalding, located at 2500 Trust Company Tower, Atlanta, Georgia, 30303, telephone no. 404-572-4600 and at 1800 M. St., N.W., Washington, D. C., 20036, telephone no. 202-466-7640, and each of whom is my employer, have jointly, severally, intentionally and unlawfully, and in violation of 42 U. S. C. 2000e ("Title VII"):

1. discriminated against me on account of my female sex by announcing a decision to discharge me as an employee; and

2. limited, segregated and classified me in ways which deprived me of employment opportunities and otherwise adversely affected my status as an employee on account of my female sex; and

3. discriminated against me for opposing practices made unlawful by Title VII, and;

4. set and applied standards for partnership which adversely impact females (including myself) and which are not a business necessity; and

5. set and applied partnership standards to me as a female which were not applied to at least some of my male peers; and

6. to the best of my knowledge have failed to take adequate affirmative action to eradicate the present effects of past and current discrimination against females and to create a work environment which is as conducive to female progress toward partnership as is provided for non-jewish white males; and

7. held numerous business and other official firm functions at discriminatory, including sexually, private clubs; and

8. ignored and failed to comply with such manifest Title VII obligations as displaying the posters required by Title VII with respect to applicants for employment; and

9. failed and refused to comply with obligations to females, including myself, under Executive Order 11246.

B. In particular, but without limiting the generality of the foregoing allegations, these unlawful actions by Respondents against me have been accomplished by the following and other circumstances:

i. Respondents failed and refused to offer me a promotion to partnership on and after May 25, 1979, despite my having performed all lawful and necessary requirements for attaining such status;

ii. Respondents failed and refused to give me a raise or a cost-of-living increase, or either, in salary on and after January 1, 1979 and continuously ever since;

iii. Respondents have announced an intention to discharge me as their employee, effective December 31, 1979;

iv. Respondents failed and refused to assign sufficient associates to work under me on matters for which I was given responsibility;

v. Respondents failed and refused to give me work assignments that would contribute to my career advancement;

vi. To the extent that lawful and necessary criteria were used, Respondents failed and refused to evaluate my performance as their employee on the same basis as the performances of their male employees were evaluated.

C. All of the foregoing have been done pursuant to a continuing policy and practice of discrimination in employment by Respondents against females, as well as against minorities and persons of the Jewish faith or origin.

Further, charging party brings this Charge of Discrimination on behalf of a class of females who have been employed or who have sought employment with Respondents as attorneys, and who have been subjected to the pattern, practice and policy of Respondents to make hiring, promotional, other employment decisions regarding persons employed by them or who seek employment with them

as attorneys because of such persons' sex and disadvantageously to persons of the female sex.

I will advise you if I change my address or telephone number and I will cooperate fully with you in the processing of my charge in accordance with your procedures.

No proceeding in or arising out of these unlawful employment practices has been commenced before any state or local agency charged with enforcement of fair employment practice laws.

My attorneys in this matter are:

George Daly
700 Law Building
Charlotte, N. C. 28202
704-376-7461

Julius Chambers
John Gresham
Chambers, Stein, Ferguson & Becton
Independence Plaza Building
951 S. Independence Blvd.
Charlotte, N. C. 28202
704-375-8461

I request expedited handling and any necessary help to preserve the status quo pending a full investigation and administrative determination of my claims.

/s/ Elizabeth Anderson Hishon
147 15th St., N. E.
Atlanta, Georgia 30361
404-885-1249

STATE OF GEORGIA

COUNTY OF FULTON

Elizabeth Anderson Hishon, being first duly sworn, says that she has read the foregoing Charge of Discrimination and the same is true of her own knowledge, and so declares under penalties of perjury.

/s/ Marjorie D. Stansel
Notary Public

My Commission Expires: 7-24-81

EXHIBIT B

Equal Employment Opportunity Commission

NOTICE OF RIGHT TO SUE
(Issued on Request)

TO:

Elizabeth A. Hishon
147 15th Street, N. E.
Atlanta, Georgia 30361

FROM:

Equal Employment Opportunity Commission
Citizens Trust Bank Building
75 Piedmont Avenue, N. E.
Suite 1000
Atlanta, Georgia 30303

Charge Number: 041800388

EEOC Representative: Betty A. Adams

Telephone Number: 404/221-6091

(See Section 706 (f) (1) and (f) (3) of the Civil Rights Act of 1964 on reverse of this form.)

This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.

( ) **More than 180 days have expired since the filing of this charge.**

(X) **Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its administrative**

process within 180 days from the filing of the charge.

(X) With the issuance of this Notice of Right to Sue the Commission is terminating any further processing of this charge.

( ) It has been determined that the Commission will continue to process your charge.

If you cannot afford or have been unable to obtain a lawyer to represent you, you should be aware that the Civil Rights Act of 1964, as amended, 42 U. S. C. 2000e-5(f) (1) permits the U. S. District Court having jurisdiction in your case to appoint a lawyer to represent you. If you plan to request appointment of a lawyer to represent you, you must make this request of the U. S. District Court in the form and manner it requires. *Your request to the U. S. District Court should be made well in advance of the end of the 90-day period mentioned above.*

You may contact the EEOC representative named above if you have any questions about your legal rights including advice on which U. S. District Court has jurisdiction to hear your case or if you need to inspect and copy information contained in the Commission's case file.

An information copy of the Notice of Right to Sue has been sent to the respondent(s) shown below.

On Behalf of the Commission
/s/ Betty A. Adams
District Director, ATDO

(*Typed Name and Title of EEOC Official*)

November 29, 1979
(*Date*)

cc: King and Spalding

VERIFICATION

STATE OF GEORGIA)
COUNTY OF FULTON)

PERSONALLY APPEARED before me, the undersigned officer, duly authorized to administer oaths, Elizabeth Anderson Hishon, who, being first duly sworn, on oath deposes and says that she is the plaintiff named in the within and foregoing complaint and that the facts stated in the complaint are true and correct.

/s/ Elizabeth Anderson Hishon

ANSWER

NOW COMES DEFENDANT KING & SPALDING and, for its answer to plaintiff's complaint, states as follows:

FIRST DEFENSE

Plaintiff's complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claims under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e, et seq. ("Title VII") are barred in that plaintiff did not file a charge of discrimination with the Federal Equal Employment Opportunity Commission ("EEOC") within 180 days of the alleged discriminatory acts.

THIRD DEFENSE

Plaintiff's claims under Title VII are barred to the extent that the alleged discriminatory acts occurred more than 180 days before plaintiff filed her charge of discrimination with the EEOC and to the extent that plaintiff failed to file a charge of discrimination with the EEOC respecting an alleged discriminatory act.

FOURTH DEFENSE

Plaintiff's claims under Title VII regarding her not being invited to become a partner by defendant are barred because an invitation to partnership is not an employment practice which is subject to Title VII.

FIFTH DEFENSE

Plaintiff's claims under Title VII are barred because defendant is not a person engaged in an industry affecting commerce within the meaning of Title VII.

SIXTH DEFENSE

Plaintiff's claims under Title VII are barred because plaintiff failed to exhaust her administrative remedies.

SEVENTH DEFENSE

Plaintiff's breach of contract claim is barred by the Statute of Frauds and by a failure of consideration, and is barred because of her status as an employee at will.

EIGHTH DEFENSE

Responding to the specific allegations of plaintiff's complaint:

1.

Defendant admits the allegations of Paragraph 1 of the complaint. For further answer, defendant states, based on information and belief, that plaintiff had, well before her last day of employment with defendant, accepted an offer to practice law with the outstanding firm of Haas, Holland, Lipshutz, Levison & Gibert beginning on or about January 2, 1980.

2.

(a) Answering Paragraph 2(a) of the complaint, defendant admits that it is a general partnership engaged in the practice of law, admits that it has offices in Atlanta,

Georgia and Washington, D. C., and admits that it represents national firms which are engaged in interstate commerce; defendant denies that it is a person engaged in an industry affecting commerce.

(b) Answering Paragraph 2(b) of the complaint, defendant denies that it is an "employer" within the meaning of 42 U. S. C. § 2000(b); defendant admits the remaining allegations of Paragraph 2(b) of the complaint.

(c) Defendant admits Paragraph 2(c) of the complaint; for further answer defendant states that it has never and does not discriminate against women in inviting new members to its partnership.

3.

Answering Paragraph 3 of the complaint, defendant admits that this Court has jurisdiction and venue to consider claims properly brought under Title VII and the Equal Pay Act, as well as pendent jurisdiction; but, under the facts of this case, defendant denies that this Court has jurisdiction and venue over plaintiff's claims under Title VII, or the Equal Pay Act, or for breach of contract.

COUNT ONE

4.

Defendant denies Paragraph 4 of the complaint.

5.

Answering Paragraph 5 of the complaint, defendant admits that portion of Paragraph 5 pertaining to plaintiff's college and law school education; defendant is with-

out knowledge or information sufficient to form a belief as to the truth of the allegation that her academic excellence was recognized throughout her academic career.

6.

Defendant admits plaintiff was admitted to practice before the Supreme Court, Court of Appeals and Superior Courts of Georgia in 1972 and has been a member of the State Bar of Georgia since 1972; and defendant further admits plaintiff was a member of various bar associations and that she served as Chairman of the State Bar Lawyer Referral Committee and that she is a member of the Lawyers Club of Atlanta. Defendant denies the remaining allegations of Paragraph 6.

7.

Answering Paragraph 7 of the complaint, defendant admits that it made an offer of employment to plaintiff; defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff received offers from other law firms.

8.

(a) Defendant admits Paragraph 8(a) of the complaint.

(b) Answering Paragraph 8(b) of the complaint, defendant denies the allegations of Paragraph 8(b) of the complaint as pled. For further answer, defendant states that all associates are employed with the expectation that they will be considered for invitation to partnership on a fair and equal basis within a reasonable

period of time if they meet the firm's standards for partnership.

(c) Defendant admits Paragraph 8(c) of the complaint. For further answer, defendant shows that an associate's evaluations in the early years when he or she is just beginning the practice of law are more limited than in the later years when the firm is in a better position to evaluate the associate's growth toward invitation to partnership.

(d) Defendant denies the allegations contained in Paragraph 8(d) of the complaint, and more specifically denies that an associate is invited to become a partner "as a matter of course" and despite having received only "satisfactory" evaluations.

9.

Answering Paragraph 9 of the complaint, defendant admits that plaintiff accepted an offer of employment and worked for defendant in its real estate department from 1972 through December 31, 1979; defendant denies that it made or that plaintiff had reason to believe all of the representations and assurances alleged in Paragraph 8 of the complaint; defendant further denies that plaintiff was discharged on December 31, 1979, or at any other time, and states that plaintiff was advised in her final evaluation in May 1978 that she would not be invited to become a partner and should seek employment elsewhere. Further answering, defendant states that plaintiff was aware of defendant's practice of not employing permanent associates and knew that associates who had been advised that they would not be invited to become a

partner sshould seek employment elsewhere; defendant specifically offered to assist plaintiff to get employment elsewhere.

10.

Answering Paragraph 10 of the complaint, defendant admits that, during her eight years as an associate with defendant, plaintiff received various communications from clients and partners expressing their appreciation for work she had completed. Answering further, defendant states that during the same time period defendant received criticisms and complaints about plaintiff's performance.

11.

Defendant denies the allegations contained in Paragraph 11 of the complaint. For further answer, defendant states that during her first two years of employment plaintiff received "good", but not "very good" or "outstanding", departmental evaluations. In her third and fourth years (1975 and 1976), plaintiff was advised that she was in a middle category, i. e., that the partnership was "unable to make a decision" as to her prospects for partnership. She was advised during her fourth year evaluation, as in previous evaluations, that she needed to develop a more practical approach to clients' problems. Further answering the allegations of said paragraph, defendant shows that in her fifth year of employment (1977), plaintiff was advised she would "probably not" be invited to become a partner, and in her sixth year (1978) plaintiff was advised defendant had voted *not* to invite plaintiff to become a partner in the firm of King & Spalding.

12.

Defendant denies paragraph 12 of the complaint. For further answer defendant denies that it made assurances to the plaintiff at any time that she would be invited to become a partner; denies that plaintiff was assured at any time that the quality of her work had been judged to be excellent; denies that her failure to be invited to become a partner was unrelated to the deficiency in her performance as a lawyer or personally, and denies that she was assured that she would again be considered for invitation to partnership in May 1979.

For further answer, defendant states that in the plaintiff's fifth year as an associate (1977), the partnership voted and plaintiff was advised that she would "probably not" become a partner. She was further advised of her shortcomings in dealing with clients' business and her inability and unwillingness to develop professional and personal relationships which would make her a full and complete lawyer.

For further answer, defendant states that in the plaintiff's sixth year as an associate (1978), more specifically in May of 1978, the partnership voted that plaintiff would not be invited to become a partner and plaintiff was so advised. At that time and on numerous occasions thereafter, plaintiff was offered assistance in finding other employment by partners in the law firm.

For further answer, in January 1979 plaintiff asked a member of the firm's management committee, Mr. James Sibley, whether the partnership would reconsider its decision. Mr. Sibley agreed to present her request for reconsideration to the partnership, but made it clear to her

that the firm had already made its decision adversely to her and that she had no basis for hope that her request would be granted. The request was put to the partnership which voted not to reconsider the matter.

13.

Defendant denies Paragraph 13 of the complaint. For further answer, defendant states that it voted in May 1979 not to reconsider the final decision it had made in the previous year (1978), to-wit, that plaintiff would not be invited to become a partner. In view of its final decision in 1978, the firm volunteered on several occasions in 1978 and 1979 to assist plaintiff in finding other employment and plaintiff always indicated that she did not wish the firm's assistance.

When plaintiff showed no sign of seeking other employment, defendant, in September 1979, more than one year after the final partnership decision, asked plaintiff when she thought she would be leaving. When she indicated that she would be leaving soon, she was asked whether she would be gone by the end of the year and she stated that that would be more than enough time for her to relocate. Based on these conversations, defendant and plaintiff reached an agreement that plaintiff would leave the firm no later than December 31, 1979. For further answer, because defendant had decided in 1978 that plaintiff would not be invited to become a partner, and was thereafter no longer employed on the same basis as other associates, plaintiff was not given any salary increases or adjustments in 1979.

14.

Defendant denies Paragraph 14 of the complaint.

15.

Defendant denies Paragraph 15 of the complaint, and specifically denies that it follows a custom, practice and policy of not inviting women to become a partner, and denies that its standard for invitation to partnership is higher for women than for men.

16.

Defendant denies Paragraph 16 of the complaint.

17.

Answering Paragraph 17 of plaintiff's complaint, defendant denies the introductory clause that it has discriminated against plaintiff because of her sex.

(a) Defendant denies Paragraph 17(a) of the complaint. For further answer, defendant denies that plaintiff performed all lawful and necessary requirements for being invited to become a partner. Defendant also states that it made its final decision not to invite plaintiff to become a partner in May 1978. In response to plaintiff's request of January 1979, defendant, in May of 1979, voted not to reconsider the 1978 decision.

(b) Defendant denies Paragraph 17(b) of the complaint and states further that it did not give plaintiff a raise or increase, or either, in 1979 because she was no longer an associate who was eligible to become a partner and had indicated that she would be seeking other employment.

(c) Defendant denies Paragraph 17(c) of the complaint. For further answer, defendant denies that it discharged the plaintiff at any time and denies that it coerced

plaintiff to leave the firm or to abandon work for clients in that plaintiff had specifically agreed with defendant that she would leave the firm no later than December 31, 1979. Defendant further denies that it retaliated against plaintiff and shows that such agreement was reached between the plaintiff and defendant prior to plaintiff's filing any action with the EEOC or the present complaint.

Defendant further shows that plaintiff's insistence on performing "work for clients" after having filed her complaint with EEOC raises serious questions of professional ethics and conflict of interest, in view of the fact that these were clients of King & Spalding, not of the plaintiff.

For further answer, defendant states that plaintiff had, at the time of the alleged retaliation and coercion, already agreed to accept employment to practice law with the outstanding firm of Haas, Holland, Lipshutz, Levison and Gibert beginning on or about January 2, 1980.

For further answer, defendant specifically objects to and moves to strike the reference to settlement discussions between plaintiff and defendant and states that said reference is improper and prejudicial and moves that said reference be expunged and physically deleted from the pleadings in this case.

(d) Defendant denies Paragraph 17(d) of the complaint. For further answer, defendant states that it did assign associates to work for plaintiff, despite requests from some associates that they not be required to work with plaintiff, and gave plaintiff responsibility for matters that would require her to work closely with other associates; however, plaintiff demonstrated that she was unable to complete these assignments effectively efficiently, and

in the clients' best interest. Defendant states further that plaintiff demonstrated an inability or unwillingness to develop professional and personal relationships with other associates, partners, and non-legal personnel in the firm, despite being urged to do so by partners of the firm.

(e) Defendant denies Paragraph 17(e) of the complaint, and states that it gave plaintiff assignments that would contribute to her career advancement; however, plaintiff demonstrated that she was unable to complete them effectively, efficiently, and in the best interests of the firm's clients.

(f) Defendant denies Paragraph 17(f) of the complaint, and denies that it failed and refused to evaluate plaintiff's performance in the same manner that it evaluated the performance of male associates. For further answer, defendant states that it used lawful, necessary, and appropriate criteria in evaluating the performance of all associates, male and female. Further, defendant shows that there were male associates in plaintiff's class who were also not invited to become partners in the firm.

(g) Defendant denies Paragraph 17(g) of the complaint.

(h) Defendant denies Paragraph 17(h) of the complaint.

(i) Defendant denies Paragraph 17(i) of the complaint, and specifically denies that it practiced or practices discrimination, denies that there are or were present effects of alleged past and current discrimination practiced by defendant, denies that it has failed to take affirmative action with respect to female lawyers, and denies that its work environment is not as conducive to the

progress of female lawyers toward an invitation to partnership as for male lawyers.

18.

(a) Answering Paragraph 18(a) of the complaint, defendant denies that plaintiff filed a timely charge of discrimination with the EEOC; defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 18(a) of the complaint.

(b) Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18(b) of the complaint.

(c) Answering Paragraph 18(c) of the complaint, defendant objects to and moves to strike any reference to conciliation efforts by the parties, and states that such references are improper, prejudicial, and defendant moves that such references be expunged and physically deleted from the pleadings in this case.

(d) Defendant denies Paragraph 18(d) of the complaint.

19.

Defendant denies Paragraph 19 of the complaint. For further answer, defendant shows that plaintiff is and has been employed with the outstanding law firm of Haas, Holland, Lipshutz, Levison & Gibert since she left the employ of defendant.

COUNT TWO

20.

Answering Paragraph 20 of the complaint, defendant hereby incorporates by reference its answers to Paragraphs 4 through 19 of plaintiff's complaint as its answer to Paragraph 20 of the complaint.

21.

Defendant denies the allegations contained in Paragraph 21 of the complaint. For further answer, defendant states that plaintiff was advised in May 1978 that she would not become a partner in the firm, was advised to seek employment elsewhere, and was thereafter no longer employed on the same basis as other associates. Male associates in her class who were also not invited to become a partner left the firm and plaintiff was the only remaining associate in her class. When plaintiff evidenced no inclination to seek other employment, it was decided not to give her any further salary increases or adjustments. Regardless, plaintiff was the highest paid associate in the firm in 1979.

22.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of plaintiff's complaint.

COUNT III

23.

Defendant incorporates by reference its answers to Paragraphs 4 through 22 as its answer to Paragraph 23 of the complaint.

24.

Defendant denies the allegations contained in Paragraph 24 of the complaint.

25.

Defendant denies the allegations contained in Paragraph 25 of the complaint.

26.

Defendant denies all allegations contained anywhere in the complaint which have not been admitted, controverted, or denied herein.

NINTH DEFENSE

Defendant is not indebted to plaintiff in any sum or amount.

WHEREFORE, defendant respectfully prays that all prayers for relief by plaintiff be denied, that all other relief be denied plaintiff, that plaintiff's complaint be dismissed with prejudice, and that defendant obtain such other relief as is just and proper.

LOKEY AND BOWDEN
/s/ Hamilton Lokey
/s/ Gerald F. Handley

Attorneys for Defendant
King & Spalding

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before me, the undersigned attesting officer, duly authorized to administer oaths R. BYRON ATTRIDGE, who, having been duly sworn, says on oath, that the facts set forth in the within and foregoing Answer are true and correct to the best of his knowledge and belief.

/s/ R. Byron Attridge

KING & SPALDING'S MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT

NOW COMES KING & SPALDING, a partnership named as defendant in this action, and, pursuant to Rule 12 of the Federal Rules of Civil Procedure, moves this Court to dismiss plaintiff's complaint and enter judgment in its behalf, as follows:

1.

King & Spalding moves to dismiss Count I of plaintiff's Complaint, which alleges a violation of Title VII of the Civil Rights Act of 1964, on the ground that this Court lacks jurisdiction over the subject matter in that plaintiff failed to file a Charge of Discrimination with the EEOC within 180 days of the date of the alleged act of discrimination in not inviting plaintiff to become a partner of King & Spalding, said act having occurred on May 26, 1978, a period of time 542 days prior to the plaintiff's filing a Charge of Discrimination with the EEOC.

2.

King & Spalding moves to dismiss Count I of plaintiff's Complaint, which alleges a violation of Title VII of the Civil Rights Act of 1964, on the ground that this Court lacks jurisdiction over the subject matter in that plaintiff's Complaint in Count I is that the King & Spalding partners failed to offer a partnership to plaintiff because she is a woman, thereby discriminating against her as an employee. Because the relationship among members of a law partnership is not that of employer-employee, there is no statutory basis for plaintiff's claim that Title VII was violated when the King & Spalding partners failed to "promote" plaintiff to partnership.

3.

King & Spalding moves to dismiss Count II of plaintiff's Complaint, which alleges a violation of the provisions of the Equal Pay Act amendments to the Fair Labor Standards Act, 29 USC, Sec. 206(d) (1) upon the ground that said Count II fails to state a claim against this defendant upon which relief can be granted, in that during the entire period in question plaintiff's pay was equal to or greater than that of any other associate of the King & Spalding firm.

4.

King & Spalding moves to dismiss Count III of plaintiff's Complaint, which alleges a breach of contract, upon the ground that said Count III fails to state a claim against this defendant upon which relief can be granted,

in that plaintiff was employed under an oral contract, terminable at the will of either party.

In support of its motions to dismiss King & Spalding attaches the affidavit of James M. Sibley as Exhibit A, the affidavit of Richard A. Denny, Jr., as Exhibit B, and the affidavit of Denise Hatter as Exhibit C.

WHEREFORE, defendant King & Spalding moves that plaintiff's Complaint be dismissed with prejudice, that judgment be entered in its behalf, that costs be taxed against plaintiff, and that it receive such further relief as the Court deems proper.

Respectfully submitted,

Lokey and Bowden

By: /s/ Hamilton Lokey
/s/ Gerald F. Handley

Attorneys for Defendant
King & Spalding

EXHIBIT A

AFFIDAVIT OF JAMES M. SIBLEY

STATE OF GEORGIA

COUNTY OF FULTON

Personally before me, the undersigned officer duly authorized to administer oaths, appeared JAMES M. SIBLEY, who after being duly sworn, stated on oath of his personal knowledge as follows:

1.

My name is James M. Sibley. I am a partner in the law firm of King & Spalding. I have personal knowledge of the facts stated in this Affidavit. I am under no legal disability. This Affidavit is given for use in the above-styled action and specifically in support of King & Spalding's Motion to Dismiss plaintiff's Complaint.

2.

I have been a partner in King & Spalding since 1947. I have served as Chairman of the Management Committee of the partnership on several occasions, and was Chairman of the Management Committee throughout 1978 and 1979. I was also the Lawyer Administrative Partner for the firm in 1978 and 1979. As Lawyer Administrative Partner, I was charged with general supervision of the performance and work assignments of attorneys in the firm as well as with general responsibility for the relationships between attorneys in the firm. As such, I was also involved in the firm's evaluation of associates.

3.

At King & Spalding, lawyers are considered for invitation to partnership through various ways or courses of action. Some lawyers, after practicing with other partnerships or associations, by virtue of their experience and achievements at the bar, have been invited to the partnership directly; other lawyers with somewhat less experience are invited to partnership after spending a short period as an associate in the firm before being considered for partnership; most of the lawyers considered for partnership are considered after having joined the firm following law school or judicial clerkships and after working at the firm as an associate for a number of years. However, they are considered for partnership, the lawyer under consideration is evaluated by the partnership's inquiry into various areas, including, but not limited to, the lawyer's technical skill, leadership, ability to attract and handle a client's work in an outstanding manner, ability to deal with other lawyers both within and without the firm, and a general compatibility with the lawyers in the partnership.

4.

For a number of years, King & Spalding has evaluated all associates on an annual basis. This evaluation is designed both to aid an associate in assessing his or her strengths and weaknesses as an attorney and, in the later years, to advise an associate of his or her likelihood of being invited to become a partner in the associate's sixth year of practice. The evaluation process includes detailed inquiry into a number of areas, including the associate's technical skills, leadership ability, and ability

to deal with other lawyers, clients, and employees of the firm.

5.

At the end of the fourth and fifth years, the partnership, after reviewing the evaluations, votes on whether an associate is likely or unlikely to become a partner; in some instances, the evaluations are inconclusive and the partnership simply defers the decision. Implicit in an evaluation at the fourth or fifth year that an associate is likely to become partner is the assumption that the associate will continue to develop and broaden his or her skills and abilities.

6.

Ms. Hishon was evaluated as an associate as part of the program described above. I am personally familiar with the evaluation of Ms. Hishon which was done at the conclusion of her fourth (1976) and fifth (1977) years as an associate, as well as the evaluation at the end of her sixth year (1978) when the decision not to admit her to the partnership was made.

7.

At the end of her fourth year (1976), Ms. Hishon's evaluation reflected certain concerns as to her relationships with clients and other people within the firm. It was too early to project, however, whether these concerns would be resolved as Ms. Hishon gained experience. As a result of these concerns, Ms. Hishon's evaluation was inconclusive and the partnership voted that it could not

accurately at that time determine her chances of becoming a partner.

8.

The evaluation at the end of Ms. Hishon's fifth year (1977) indicated that the concerns identified in the preceding year had not been resolved, and had indeed become problems, and that she was not developing and progressing with her peers. It was determined that Ms. Hishon was having some difficulties in dealing with other attorneys and with clients. After carefully reviewing and discussing these difficulties, the partnership determined that Ms. Hishon would "probably not" be invited to become a partner in the firm, and Ms. Hishon was advised of this determination in September 1977. "Probably not" is a specific evaluation category (a term of art within the firm evaluation process) which is considered and voted on by the partnership. At the same time, those associates who received favorable evaluations and who the following year were invited into the partnership, were informed that they would "probably" be invited to the partnership, if they continued to grow in accordance with the expectations of the partners.

9.

In May 1978, at the end of Ms. Hishon's sixth year as an associate, she was again evaluated by the partnership, this time in the context of the final partnership decision. The problems identified earlier still persisted and there was substantial doubt that Ms. Hishon could perform effectively the requirements of a partner in the firm. It was strongly felt that these problems would preclude Ms.

Hishon from being an effective partner in the firm. Accordingly, the partnership determined that Ms. Hishon would not be invited to become a partner in the firm. Ms. Hishon was immediately advised of this decision.

10.

It is the custom and practice of the firm for an associate who is not invited into the partnership to remain at the firm until he or she has had an opportunity to obtain other employment. Accordingly, the firm directed Mr. Denny to so advise Ms. Hishon that she was welcome to remain with the firm for a reasonable time while pursuing career opportunities elsewhere.

11.

In Ms. Hishon's associate class of seven lawyers, four associates were invited to join the partnership; three associates, Ms. Hishon and two male attorneys, were *not* invited to join the partnership. These two male attorneys had, consistent with the firm's custom and practice, left the firm in 1977 to practice elsewhere.

12.

In January 1979, Ms. Hishon requested a meeting with me. I met with her and Mr. Richard A. Denny, Jr., the Administrative Partner of the Real Estate Department. At that meeting, Ms. Hishon inquired into her "status" with the firm. Mr. Denny and I informed her that the partnership considered its determination in May 1978 (some eight months before) with regard to her invitation to partnership to be final. Ms. Hishon then asked me whether the partnership would reconsider its decision not

to make her a partner. I personally had no desire to have her reconsidered because I did not think she merited it. Nonetheless, I agreed to present her request for reconsideration to the partnership. I made it clear to her that the firm had already made its decision adversely to her and that she had no basis for optimism that her request would be granted. Neither at this meeting, nor at any other time prior to her attorney's contact in November 1979 did Ms. Hishon aver or mention that she felt she had been discriminated against due to her sex.

13.

At a partnership meeting in May 1979, I conveyed Ms. Hishon's request to be reconsidered to the partners. The partners voted not to reconsider the final decision they had made in the previous year not to make Ms Hishon a partner.

14.

I understand that Ms. Hishon is asserting a claim under the Equal Pay Act. I am personally familiar with the compensation policy which King & Spalding has had in effect for associates during the period of Ms. Hishon's employment with the firm. Stated simply, the firm has followed a policy whereby all associates in a given class receive the same gross compensation from the firm. The only differences in compensation are based upon the associate's tenure with the firm or, where appropriate, upon an associate's prior experience, such as a judicial clerkship or employment with another law firm. The firm does not provide merit bonuses or any other differentiating compensation to members of a given class of associates. Pursuant

to this policy, Ms. Hishon received the same gross compensation as the other members of her class during the period from 1972 through June 1978. Beginning in July 1978, Ms. Hishon was the only associate attorney remaining in that class (four had become partners; two others who were not invited to become partners had left the firm.)

15.

Associate attorneys are employed by King & Spalding for an indefinite term. The firm understands that an associate is free to leave the firm at any time and seek other employment. Similarly, the firm retains the right to discharge any associate who, for any reason, does not meet the firm's standards. No written employment contract has ever been entered into between King & Spalding and any associate attorney, including Ms. Hishon.

/s/ James M. Sibley

EXHIBIT B

AFFIDAVIT OF RICHARD A. DENNY, JR.

STATE OF GEORGIA

COUNTY OF FULTON

Personally before me, the undersigned officer duly authorized to administer oaths, appeared RICHARD A. DENNY, JR., who, having been duly sworn, stated on oath of his personal knowledge as follows:

1.

My name is Richard A. Denny, Jr. and I am a partner in the law firm of King & Spalding. I have personal knowledge of the facts set forth in this Affidavit. I am under no legal disability. This Affidavit is given for use in the above-styled action and specifically in support of King & Spalding's Motion To Dismiss Plaintiff's Complaint.

2.

I presently serve as the Administrative Partner of the Real Estate Department at King & Spalding. I have been Administrative Partner since the Real Estate Department was formed in 1968.

3.

As Administrative Partner of the Real Estate Department, I have general supervisory responsibility for the associates who are assigned to the Department. This responsibility includes overseeing work assignments, supervising client's relationships, and generally reviewing each associate's development. Throughout the period of her

employment with King & Spalding, plaintiff Elizabeth A. Hishon was assigned to the Real Estate Department.

4.

As Administrative Partner of the Real Estate Department, I also have a principal responsibility for the evaluation of associates in the Department. I have reviewed the Affidavit of Mr. James M. Sibley dated March 28, 1980 and I confirm as accurate the account in that Affidavit of the evaluations of Ms. Hishon that were made after her fourth and fifth years as an associate. I further confirm as accurate Mr. Sibley's account of the final partnership determination which was made after Ms. Hishon's sixth year as an associate.

5.

I had personal responsibility for communicating the results of her evaluations to Ms. Hishon, and I informed her of each result and the reasons for each result, as those reasons are set forth in Mr. Sibley's Affidavit.

6.

In addition, at the end of her fourth year, Ms. Hishon was told by me that she was making progress, but that additional progress would have to be made for her to be considered for partner. At the end of her fifth year (1977), Ms. Hishon was clearly told by Mr. Sibley and me that she would "probably not" be invited to become a partner.

7.

I also informed Ms. Hishon of the partnership's decision in May 1978 that she would not be made a partner,

and explained the grounds for that decision. She expressed great disappointment with the decision, but she did not ask whether that decision would be reconsidered at any future meeting.

8.

After I informed Ms. Hishon of the partnership decision in May 1978, she and I discussed her future plans. Ms. Hishon indicated that she did not wish to remain with the firm if she was not to become a partner. I advised her that the firm would assist her in finding another job which is consistent with firm custom and practice for associates who are not invited to become partners. In December 1978, Ms. Hishon and I again discussed her future plans, and I reiterated the firm's interest in helping her find other employment.

9.

In January 1979, Ms. Hishon asked to arrange a meeting with Mr. Sibley. I arranged and attended the meeting. Ms. Hishon's inquiry at that meeting into her "status" with the firm was totally surprising to me since, in our earlier conversations, Ms. Hishon had expressed her understanding that the firm expected her to leave and was willing to help her find other employment. Ms. Hishon then asked whether the firm would reconsider its May 1978 decision. That was, to my knowledge, the first time that Ms. Hishon had inquired into the possibility of the firm reconsidering its decision. Mr. Sibley indicated that he would convey Ms. Hishon's request for reconsideration to the partnership but that she should not be optimistic that it would be granted. Ms. Hishon did not state or suggest in any

way that the 1978 decision must or should be reconsidered because the firm had allegedly discriminated against her due to her sex. The first time that I knew that she felt that she had allegedly been discriminated against due to her sex was when the firm was contacted by her lawyer in November 1979.

10.

In May 1979 the partnership voted not to reconsider its determination not to admit Ms. Hishon as a partner. I conveyed this decision to her immediately and again encouraged her to find other employment. Her response was that she had been working on finding another job.

11.

In September 1979, I told Ms. Hishon that the firm needed to have a clear idea of when she planned to leave. When she responded that she was making plans and should be gone soon, I asked whether it was reasonable to assume that she would be gone by December 31, 1979. She responded that it was reasonable and that she probably would be gone sooner.

12.

Ms. Hishon left the firm effective December 31, 1979. It is my understanding and belief that, on January 2, 1980, Ms. Hishon was employed by the firm of Haas, Holland, Lipshutz, Levison and Gibert.

/s/ Richard A. Denny, Jr.

EXHIBIT C

AFFIDAVIT OF DENISE HATTER

Personally before me, the undersigned officer duly authorized by law to administer oaths, appeared DENISE HATTER, who, having first been duly sworn, stated on oath as follows:

1.

My name is Denise Hatter. I have personal knowledge of the facts set forth in this Affidavit. I am under no legal disability. This Affidavit is given for use in the above styled action and specifically in support of King & Spalding's Motion To Dismiss plaintiff's Complaint.

2.

I am employed by King & Spalding as Head of the firm's Accounting and Bookkeeping Department. I am in charge of the business records which King & Spalding maintains in the ordinary course of its business and which reflect the total compensation paid to associate attorneys employed by the firm.

3.

The business records maintained by King & Spalding reflect that at all times from July 1, 1978 through December 31, 1979 plaintiff Elizabeth Anderson Hishon was paid a higher salary than any other associate employed by the firm. Ms. Hishon's base salary throughout this period exceeded that paid to the next highest paid associate employed by the firm by $1,500. In addition, Ms. Hishon received a year-end bonus from the firm in both 1978 and 1979 that equalled the highest bonus paid by the firm to any other associate. Such a bonus is not a merit bonus,

but a routine year-end bonus paid on the basis of longevity of service. In summary, Ms. Hishon's total compensation from the firm during this period exceeded the highest compensation paid by King & Spalding to any other associate.

/s/ Denise Hatter

KING & SPALDING'S BRIEF IN SUPPORT OF ITS MOTIONS TO DISMISS PLAINTIFF'S COMPLAINT

NOW COMES KING & SPALDING, a partnership named as defendant in this action, and respectfully submits this Brief in Support of its Motions to Dismiss Plaintiff Elizabeth Anderson Hishon's ("plaintiff") Complaint.

STATEMENT OF FACTS

Plaintiff's complaint, in essence, is that she was not invited to become a partner in King & Spalding because she was a woman. The decision of the partners of King & Spalding not to invite the plaintiff to become a partner was made on May 26, 1978. Plaintiff filed her first complaint charging sex discrimination with the EEOC on November 19, 1979, a date 542 days after the final decision was made. Section 706(d) of Title VII of the 1964 Civil Rights Act provides a 180 day Statute of Limitations for filing a Charge of Discrimination with the EEOC.

King & Spalding's decision not to invite the plaintiff into partnership was based on merit and the fact plaintiff is a woman played no part in the decision, but even if it had, that decision cannot be challenged now.

Plaintiff contends the decision not to invite her to partnership was made by the King & Spalding partners on May 25, 1979. This is simply no so. The facts are that, on January 15, 1979, 234 days after the final decision not to invite plaintiff to partnership had taken place, plaintiff for the first time asked if the partners would reconsider their decision of May 26, 1978. On May 25, 1979, the plaintiff's request for reconsideration was presented to the partners. At that meeting the partnership voted that the previous year's final decision would not be reconsidered.

Defendant King & Spalding is a partnership organized under the laws of the State of Georgia and engaged in the general practice of law. The firm presently consists of 103 lawyers, including 52 partners and 51 associates.

Plaintiff was employed as an associate by King & Spalding from April 3, 1972 through December 31, 1979.

During the period of plaintiff's employment with King & Spalding, the firm followed certain established procedures regarding the evaluation of associates and the method of determining whether an associate would be invited to become a member of the partnership. Those procedures and the application of the procedures to plaintiff are explained in the Affidavits of James M. Sibley (Exhibit "A") and Richard A. Denny, Jr. (Exhibit "B"), partners in the firm. **An understanding of the firm's procedures clearly establishes that this Court lacks subject matter jurisdiction over Count I of plaintiff's Complaint and that Counts II and III fail to state a claim upon which relief can be granted.**

King & Spalding periodically evaluates the professional development of each associate in order to determine

what progress he or she is making toward invitation to partnership. Pursuant to this established evaluation plan, plaintiff received evaluations of her performance and professional development at the end of her fourth and fifth years as an associate. At the end of her fourth year as an associate (1976), plaintiff's evaluation reflected certain concerns about her relationships with clients and people within the firm. As a result, plaintiff's evaluation was inconclusive and the partnership determined that it could not accurately predict her chances of becoming a partner. Plaintiff was advised by Mr. Denny, the Administrative Partner of the Real Estate Department, that her evaluation indicated that she was making progress, but that additional progress would have to be made for her to be considered for partner. Thus, no assurances were given to her at that time that she would become a partner. At or about the end of plaintiff's fifth year as an associate (1977), she was advised by Mr. Denny that, based upon her overall performance as an associate, she "probably would not" be invited to become a partner in the firm.

The partnership's final determination with regard to plaintiff and plaintiff's class of associates was made in May, 1978. It was determined at that time plaintiff would not be invited into the partnership. Plaintiff was advised of this decision by Mr. Richard A. Denny, Jr.

After this decision was made, Mr. Denny was requested to advise plaintiff that consistent with the custom and practice of King & Spalding she was welcome to remain with the firm, but only until she had had a reasonable time to pursue other career opportunities. He so advised plaintiff shortly thereafter.

In plaintiff's class there were seven associates. Four were invited to partnership. Three were not—the plaintiff and two male associates.

At the time that she was advised of the determination not to admit her to the partnership, there was no discussion as to whether the firm would reconsider its decision. To the contrary, the decision was conveyed to plaintiff as being the final determination with regard to her admission into the partnership.

In January, 1979, eight months after the final partnership determination regarding plaintiff, she requested a meeting with Mr. Denny and James M. Sibley, a partner in the firm who was, at that time, Chairman of the Management Committee. At that meeting, plaintiff first inquired into her "status" with the firm. Mr. Sibley told plaintiff that the partnership determination in May, 1978, had been the final decision on that question. Plaintiff then asked whether the partnership would reconsider its decision not to make her a partner. Mr. Sibley agreed to present plaintiff's request for reconsideration to the partnership, but stated unequivocally to plaintiff that, in his opinion, the firm had already made its final partnership decision with regard to her and that she had no basis for optimism that her request for reconsideration would be granted.

At a meeting of the partnership in May, 1979, Mr. Sibley conveyed to the partnership plaintiff's request for reconsideration of the 1978 decision, but the partnership determined not to reconsider the 1978 decision. This information was immediately conveyed to plaintiff by Mr. Denny, and plaintiff was again urged to seek other employment.

The facts set forth above demonstrate that *the only partnership determination which was ever made with regard to plaintiff was made in May, 1978.* Plaintiff's allegations regarding the compensation policies of the firm and her departure from the firm in 1979 merely describe subsidiary effects of that decision. King & Spalding does not employ permanent associates, and associates who are not admitted to partnership are expected, after a reasonable period of time, to find other employment. The firm offers all reasonable assistance to such associates in finding employment. The facts set forth in Mr. Denny's Affidavit establish that plaintiff received the full benefit of the firm's policies regarding associates who are not invited into the partnership.

The facts also provide a clear basis for dismissal of Count II of plaintiff's Complaint, her claim under The Equal Pay Act. Throughout the tenure of plaintiff's employment with the firm, King & Spalding followed a policy of compensating all members of a given class of associates on an equal or "lock-step" basis. For compensation purposes, an associates's "class" is generally determined by the year in which he or she joins the firm. At all times between the time plaintiff was hired as an associate in 1972, and the decision of the firm not to admit her into the partnership in 1978, plaintiff was compensated on completely equal terms with her contemporaries in the firm. There were two other associates in plaintiff's class (both males) who also were not invited to become partner; both left the firm in 1977 after their fifth year evaluations. Although plaintiff received a negative appraisal in 1977, she remained with the firm and was compensated on an equal basis with the four other members of her class who

remained. Following the admission of these four persons to the partnership in July, 1978, plaintiff was the only employee in her class remaining with the firm. Thereafter, until her departure on December 31, 1979, she remained the highest paid associate in the firm.

Finally, the facts demonstrate that Count III of plaintiff's Complaint should be dismissed. No written contract of employment ever existed between plaintiff and defendant. At all times, plaintiff was an employee at will, and it was understood by all parties that plaintiff could resign or be discharged at any time. Under these facts, there could be no executory obligation on King & Spalding to admit plaintiff to the partnership.

ARGUMENT AND CITATION OF AUTHORITIES

THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S CLAIM UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

A. Plaintiff's Failure To File A Charge Of Discrimination Within 180 Days Of The May, 1978 Partnership Decision Deprives This Court Of Jurisdiction Over County I.

Section 706(d) of Title VII of the 1964 Civil Rights Act, as amended, provides that a party alleging discrimination in violation of the Act must file a Charge of Discrimination with the EEOC "within 180-days after the alleged unlawful employment practice occurred . . . " 42 U. S. C. § 2000e-5(e). Under the controlling decisions of the Fifth Circuit, it is clear that timely compliance with this filing requirement is a jurisdictional prerequisite to the maintenance of an action under Title VII. ***Gonzalez***

v. Firestone Tire & Rubber Co., 610 F. 2d 241 (5th Cir. 1980); *Bickham v. Miller*, 584 F. 2d 736, 738 (5th Cir. 1978); *McArthur v. Southern Airways, Inc.*, 569 F. 2d 276, 277 (5th Cir. 1978) (where "no plaintiff in this cause made a timely filing with the Equal Employment Opportunity Commission (EEOC), the District Court should have dismissed this cause for lack of jurisdiction"); *see United Air Lines, Inc. v. Evans*, 431 U. S. 553, 555 and n. 4; see also *Canty v. Olivarez*, 452 F. Supp. 762, 767 (N. D. Ga. 1978). Defendant respectfully submits that, in this case, the only alleged discriminatory event about which plaintiff could legally complain was the decision in May, 1978 not to invite her to become a partner. Because plaintiff alleges that she filed her Charge of Discrimination with the EEOC on November 19, 1979, more than one and one-half years after the firm's decision, this Court lacks subject matter jurisdiction over her Title VII claim.

The essence of plaintiff's Title VII claim is that she was discriminatorily denied admission to the partnership of King & Spalding. While the Complaint outlines other allegedly discriminatory conduct, these other matters constitute no more than inevitable effects of the partnership decision and are not independently actionable, as explained below. With regard to the partnership claim itself, the Affidavits of James M. Sibley and Richard A. Denny, Jr., Exhibits "A" and "B" to Defendant's Motion To Dismiss, provide the factual basis of defendant's argument that this Court lacks subject matter jurisdiction over plaintiff's claim. Specifically, those Affidavits establish the following facts:

(1) Consistent with firm policy and practice, plaintiff was considered for partnership on only one occasion, and that occasion was in May, 1978.

(2) The year before, she had been warned in her evaluation that she would probably not be invited to become a partner.

(3) Following the decision not to admit plaintiff into the partnership in May, 1978, plaintiff was advised of the firm's decision and encouraged to seek other employment.

(4) In January, 1979, eight months after the final partnership decision, plaintiff for the first time requested that the firm reconsider its May, 1978 decision not to admit her to the partnership. Plaintiff was advised her request would be conveyed to the partnership but she should not be optimistic about the prospects for reconsideration.

(5) In May, 1979, the partnership determined not to reconsider its 1978 decision that plaintiff would not be invited to become a partner.

(6) The firm has never reconsidered or reversed a final decision on whether to admit an associate to the partnership.

In evaluating the facts alleged in plaintiff's Complaint, in light of the affidavits submitted by Defendant, it should be remembered that Defendant's Motion To Dismiss Count I is based upon this Court's lack of subject matter jurisdiction, not upon the failure of the Complaint to state a claim. It is, of course, well established that "[t]he burden of proof on a Rule 12(b)(1) motion [to dismiss for lack of subject matter jurisdiction] is on the party asserting jurisdiction." 5 *Wright & Miller, Federal Practice & Procedure: Civil* § 1350, at 555; *Thomson v. Gaskill*, 315 U.S. 442 (1942); *McNutt v. General*

Motors Acceptance Corp., 298 U. S. 178 (1936); *Save Our Cemeteries, Inc. v. Archdiocese*, 568 F. 2d 1074, 1076 (5th Cir. 1978) rehearing denied, 572 F. 2d 320, cert. den., 439 U. S. 836 (1978); *Canty v. Olivarez*, 452 F. Supp. 762 (N. D. Ga. 1978) (burden on plaintiff in Title VII case to establish jurisdiction by proving that complaint was filed in timely manner). Plaintiff's Complaint indicates that her Charge of Discrimination was not filed with the EEOC until November 19, 1979 (Complaint ¶ 18(a)). Thus, because the only partnership decision regarding plaintiff was made in May, 1978, her Charge was untimely and this Court lacks jurisdiction.

It is apparent from plaintiff's Complaint that she hopes to establish the jurisdiction of this Court by reference to the May, 1979 partners' meeting. The Affidavits of James M. Sibley and Richard A. Denny, Jr. establish conclusively, however, that plaintiff was not in any sense considered for partnership at that meeting. To the contrary, the partnership voted *not* to reconsider its May, 1978 decision that plaintiff would not be invited into the partnership. No presumptive truthfulness attaches to plaintiff's allegations that an actual determination was made not to admit her in 1979, since these allegations relate to the jurisdictional basis of her claim. See *Mortensen v. First Federal Savings & Loan Association*, 549 F. 2d 884, 891 n. 16 (3rd Cir. 1977). Moreover, plaintiff has alleged no facts which would show that the firm's determination not to reconsider its May, 1978 decision was discriminatory. The affidavits show to the contrary that plaintiff is the first associate to have ever requested a reconsideration.

Because she was considered for partnership only in May, 1978, plaintiff was required to file her Charge of Discrimination within 180-days after she was informed of the May, 1978 decision. See *Bickham v. Miller,* 584 F. 2d 736 (5th Cir. 1978) (Air Force employee's claim of sex discrimination and promotion barred by failure to file charge within prescribed time of learning that application for promotion was denied). There is no question but that plaintiff was advised shortly after the May, 1978 partners' meeting that she would not be invited into the partnership, and the time for the filing of her Charge of Discrimination accordingly began to run from the date of that advice. The mere fact plaintiff chose, eight months after the partnership decided not to admit her, to seek a reconsideration of this decision, can in no sense revive her claim of discrimination. See *Goldman v. Sears, Roebuck & Co.*, 607 F. 2d 1014 (1st Cir. 1979).

In *Goldman* the First Circuit explained that a request to reconsider an earlier employment decision could not revive a cause of action which was otherwise time-barred. The plaintiff in *Goldman* was transferred from one department to another, less profitable department. The Complaint alleged the plaintiff made "repeated requests" to be returned to his original department, but the defendant refused. The First Circuit held the plaintiff's claim was barred by his failure to file a Charge of Discrimination within 180-days of the original transfer, and offered the following explanation as to why a request for reconsideration of the transfer was not sufficient to revive the claim.

> "Under the construction urged by appellant, every demotion could be turned into a continuing violation merely by pleading that plaintiff had continued to pro-

> test unsuccessfully. We are not persuaded that Congress intended such an easy means of circumventing the 180-day requirement.
>
> 607 F. 2d at 1019.

See also: *Gonzales v. Firestone Tire & Rubber Co.*, 610 F. 2d 241, 249 (5th Cir. 1980) (allegations that an employer "refused to rectify its past violation" will not revive an otherwise time-barred claim); *Woodburn v. LTV Areospace Corp.*, 531 F. 2d 750 (5th Cir. 1976); *Brohl v. Singer Co.*, 407 F. Supp. 936, 939 (M. D. Fla. 1976) (discharged employee who failed to file a notice of intent to sue within time prescribed under Age Discrimination in Employment Act could not revive claim simply by seeking reemployment).

It would be particularly inappropriate to allow plaintiff in this case to revive her claim because her request for reconsideration was not made until January 1979, eight months after the final decision had been made in May, 1978. Thus, the time within which plaintiff could lawfully file a Charge of Discrimination with regard to the partnership determination had already expired before she even requested reconsideration. Under these facts, to allow plaintiff to revive a dead cause of action merely by requesting reconsideration would be tantamount to reading the 180-day filing requirement out of the statute. Any claimant could revive a stale claim simply by reapplying or requesting reconsideration. Such an interpretation would directly undercut the legislative intent of quickly resolving employment disputes of this kind.

Since the Court lacks subject matter jurisdiction over the question of whether plaintiff was discriminatorily denied admission to the partnership, the Court also lacks

jurisdiction to consider the other allegations included in Count I of plaintiff's Complaint, because these allegations relate solely to the inevitable *effects* of the partnership determination. Under the established policies of Defendant, there are no permanent associates. If an attorney is not admitted to the partnership, that attorney is expected, within a reasonable period of time, to find other employment. Placed within this context, plaintiff's allegations regarding defendant's failure to grant her salary increases and the decision to encourage her to find other employment merely describe *effects* of the decision not to admit her to the partnership. The simple fact that a decision has continuing effects is not sufficient for Title VII jurisdiction when the decision itself has not been made the subject of a timely charge with the EEOC.

In *United Air Lines, Inc. v. Evans,* 431 U. S. 553 (1977), the Supreme Court carefully delineated the difference between a discriminatory act or decision, which can properly form the basis for a claim under Title VII, and the continuing effects of such a decision, which cannot provide the independent basis for a claim. In *Evans,* the plaintiff had been forced to resign her employment as a flight attendant in 1968 because she became a married woman. Subsequently, the company changed its policy to allow married employees to serve as flight attendants, and the plaintiff was hired as a new employee. After several attempts to regain her seniority for the time which she had previously worked, the plaintiff brought suit, alleging the discriminatory effects of her forced resignation in 1968 were being illegally perpetuated by United's refusal to grant her seniority for her previous employment. The Supreme Court held the failure of the plaintiff to file a Charge of Discrimination within 180-days of her forced

resignation in 1968 barred her claim, even though the decision continued to affect her job. As Justice Stevens explained:

> "Respondent is correct in pointing out that the seniority system gives present effect to a past act of discrimination. But United was entitled to treat that past act as lawful after respondent failed to file a charge of discrimination within the 90-days then allowed by section 706(d). A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely an unfortunate event in history which has no present legal consequences."
>
> *United Air Lines, Inc. v. Evans*, 431 U. S. 553 at 558.

The Fifth Circuit recently analyzed the *United Air Lines* decision and explained that "[a]lthough . . . a past discriminatory act may continue to affect an employee's present pay and fringe benefits, such an effect does not constitute a continuing violation of Title VII." *Gonzalez v. Firestone Tire & Rubber Co.*, 610 F. 2d 241, 249 (5th Cir. 1980). Rather, the *Gonzales* Court explained, the decision which generated the effects must itself have been the subject of a timely charge:

> "[W]here the employer engaged in a discrete act of discrimination more than 180 days prior to the filing of a charge with the EEOC by the employee *allegations that the discriminatory act continues to adversely affect the employee or that the employer presently refuses to rectify its past violation will not satisfy the requirement of 42 U. S. C. § 2000e-5(e)*

that the plaintiff file his charge of discrimination within 180 days of the discriminatory act."

610 F. 2d at 249.
(Emphasis added.)

Applying the *Evans* and *Gonzales* analysis to this case, the only arguable violation of Title VII was the May, 1978 partnership decision. If plaintiff's claim with regard to that decision is barred, she has no independent right to complain about the continuing effects of that decision under the established policies and procedures of defendant.

In summary, this Court lacks subject matter jurisdiction over plaintiff's claim that she was discriminatorily denied access to the partnership because plaintiff failed to file a Charge of Discrimination complaining of that decision within 180-days after the May, 1978 partnership meeting. Since the remaining allegations of Count I of plaintiff's Complaint deal with subsidiary *effects* of the partnership decision, this Court similarly lacks jurisdiction to consider those claims.

B. Admission To Partnership Is Not A Term or Condition Of Employment Within The Meaning Of Title VII And The Court Therefore Lacks Jurisdiction Over Count I Of Plaintiff's Complaint.

As indicated above, the essence of plaintiff's Title VII claim is that she was unlawfully denied admission into the partnership on the basis of her sex. On the basis of statutory, common law, and constitutional considerations outlined below, defendant respectfully submits the standards used to govern an invitation to partnership in a law firm are not subject to scrutiny under Title VII, and this

Court therefore lacks jurisdiction to consider plaintiff's partnership claim.

Sections 703(a) and (b) of Title VII provide that it is unlawful:

> "(a) To fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his *compensation, terms, conditions, or privileges of employment,* because of such individual's race, color, religion, sex, or national origin, or
>
> (b) To limit, segregate, or classify his *employees or applicants for employment* in any way which would deprive or tend to *deprive any individual of employment opportunities or otherwise adversely affect his status as an employee,* because of such individual's race, color, religion, sex or national origin."
>
> 42 U. S. C. § 2000e-2(a) and (b) (Emphasis added)

Defendant submits that admission to the partnership is an invitation to become a principal or owner of the law firm. As such, the standard applied to partnership determinations is not a term or condition of employment within the meaning of Title VII and does not affect an associate's status as an employee.

In *Burke v. Friedman,* 556 F. 2d 867 (7th Cir. 1977), the Seventh Circuit specifically held that the individual partners in an accounting firm could not be considered employees within the meaning of Title VII. As the Court explained, at page 869:

> "'A partnership is generally said to be created when persons join together their money, goods, labor, or skill for the purpose of carrying on a trade, profession, or business and when there is community of in-

terest in the profits and losses.' *Commissioner of Internal Revenue v. Tower*, 327 U. S. 280, 286, 66 S. Ct. 532, 535, 90 L. Ed. 670 (1946). . . . Similarly, Section 6 of the Uniform Partnership Act defines a partnership as 'an association of two or more persons to carry on as co-owners a business for profit.' Partners manage and control the business and share in the profits and losses. . . . In light of the foregoing, we do not see how partners can be regarded as employees rather than as employers who own and manage the operation of the business."

In addition to the authorities discussed above, defendant submits the nature of the partnership relationship precludes the application of Title VII. Partnerships are unique legal entities governed by state law. By statute in Georgia, no person can become a member of a partnership without the consent of the existing partners. Ga. Code Ann. § 75-204. This rule accords with the common law's recognition that consent is the very essence of partnership. As the Georgia Supreme Court has recognized:

> "[T]he partnership consists of a few individuals, bound together by ties of friendship and mutual confidence, and who therefore are not at liberty, without the consent of all, to retire from the firm and substitute other persons in their places."
>
> *Hammond v. Otwell*, 170 Ga. 832, 833 (1930).

To hold Title VII governs the standards of admission to a business partnership like King & Spalding would be to require the existing partners to enter into a partnership with plaintiff against their will, thereby ignoring the consensual nature of a partnership. Defendant submits nothing in the statutory language or legislative history of Title VII indicates that Congress intended to rewrite the partnership laws of the States to eliminate this essential consent requirement. Absent such an implicit rewriting,

however, the Act cannot be applied to admission to a partnership.

In addition to the statutory and common law principles which suggest that Title VII does not apply to the standards by which partners are admitted to a partnership, there are strong constitutional barriers as well.

A business partnership is certainly one type of association which is protected by the First Amendment from excessive governmental intrusion. Justice Goldberg explained in 1964, the year Title VII was enacted:

> "[I]t is the constitutional right of every person to close his home or club to any person or to choose his social intimates and *business partners* solely on the basis of personal prejudices including race. These and other rights pertaining to privacy and private association are themselves constitutionally protected liberties."
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> *Bell v. Maryland*, 378 U. S. 226, 313 (1964) (concurrence) (Emphasis added).

The same view has been espoused more recently, as follows

> "[T]he Court wishes to reiterate that any truly private organization or association, such as a country club, a social club, *a business partnership*, or a political association would be beyond the bounds of government regulation with regard to membership. . . . To allow such a governmental intrusion would violate not only the First Amendment, but the very essence of the Bill of Rights."
>
> *Wright v. Cork Club*, 315 F. Supp. 1143, 1156-57 (S. D. Tex. 1970) (Emphasis added).

Of course, the question of the constitutionality of Title VII in regard to partnership can be avoided by construing

the act as not applying to an invitation to partnership. Such construction is a proper one, we submit, especially when one considers the fact the act is designed to avoid discrimination by an employer against an employee. As an associate, plaintiff was an employee. As a partner, she would have become an employer. Nothing in the act requires an employer to convert an employee into an employer.

The statutory, common law, and constitutional barriers to application of Title VII to partnership decisions gain particular significance within a law firm partnership. Because of the sensitive nature of the relationship between a law firm and its clients, it becomes particularly important for each partner to have the confidence and trust of the other partners. A mistake by any partner becomes, in the eyes of the law, the mistake of the partnership and accordingly threatens the professional reputation and economic well-being of all the partners. Within this context, the notion that one might be required by Title VII to enter into a partnership with another against his or her will becomes particularly disturbing. Thus, within such an environment, the admission of new partners must be governed by the consent of the existing partners, not by a federal statutory scheme.

Defendant recognizes that one court has determined that the opportunity to become a partner in a law firm is a "term, condition, or privilege of employment" within the meaning of Title VII. *Lucido v. Cravath, Swaine & Moore*, 425 F. Supp. 123 (S. D. N. Y. 1977). The *Lucido* court, however, did not adequately analyze either the constitutional or the common law barriers to application of Title VII to a law firm partnership. Moreover, even the *Lucido*

court appeared to recognize that Title VII does not extend to the relationship of partners among themselves. Absent such an extension, the reasoning of the *Lucido* opinion is clearly flawed. If the partnership is entitled to distribute profits, make decisions regarding advancement within the partnership, and even terminate or exclude existing partners on whatever basis it chooses, applying Title VII standards to admission criteria would be a meaningless exercise. Under this approach, a partnership could be forced to admit a person to partnership one day and then with impunity could throw him or her out the next. Defendant respectfully submits that the *Lucido* opinion was wrong, and that the question of admission to partnership remains outside the scope of Title VII.

II.

COUNT II OF PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM AGAINST KING & SPALDING UPON WHICH RELIEF CAN BE GRANTED.

Count II of plaintiff's Complaint alleges a violation of the Equal Pay Act. 29 U. S. C. § 206(d). The statute of limitations for an Equal Pay Act claim is two years, with an extension to three years in the case of a willful violation. 29 U. S. C. § 255(a). Thus, even under the most favorable reading of plaintiff's complaint, Count II can only relate to discrimination in pay occurring since February, 1977.

Assuming *arguendo* that plaintiff could establish the factual predicates to an Equal Pay Act claim ("jobs the performance of which requires equal skill, effort, and responsibility") in the context of a large law firm divided

into different departments and where each attorney has individual assignments, it is clear that no such claim can be asserted by plaintiff. The Affidavit of James M. Sibley summarizes the policies of King & Spalding regarding associate compensation which have been in effect at all times since plaintiff was employed by the firm. Stated simply, throughout this period Defendant has adhered to a system under which all members of a given class of associates have received the same gross compensation, including bonuses. With certain variances for prior experience such as clerkships, an associate's "class" for purposes of compensation is determined by the year in which he or she joined the firm. The firm's business records, as summarized in the Affidavit of Denise Hatter, reveal that throughout the period from February, 1977 through June, 1978, plaintiff received the same gross compensation as all other members of her class of associates.

Beginning in July, 1978, plaintiff was the sole member of her class of associates, the other members having been admitted to the partnership, or having moved on to other employment. Plaintiff was advised in May, 1978, that she would not be invited to become a partner and was encouraged to find other employment. Accordingly, she was no longer comparable to other associates in that (1) she was the only associate remaining in her class, (2) she was, presumably, actively seeking other employment, and (3) she had been advised that she would not be invited to become a partner in the firm. Nonetheless, as the Hatter Affidavit establishes, she remained the highest paid associate in the firm in 1978 and 1979 and even received a bonus that equaled or exceeded that paid to any other associate in both years. Thus, plaintiff clearly received

compensation which was equal to or greater than that of associates with similar responsibilities.

Plaintiff may contend that the Equal Pay Act was violated because her pay in 1978 and 1979 did not equal that of the associates in her class who became partners in 1978. Clearly, plaintiff's compensation for the period after July, 1978 cannot be compared to the income of these individuals as partners, because the Equal Pay Act only prohibits *employers* from paying wages *to employees* at a rate less than the rate paid *to employees of the opposite sex*. The members of plaintiff's class who were admitted to partnership were not "employees" after July, 1978. *See Burke v. Friedman, supra.* Thus, to the extent that plaintiff's Equal Pay Act claim is based on the fact that she received less income than did the persons who were admitted to the partnership in 1978, it is not legally cognizable under the Act.

Plaintiff also asserts in her Complaint that she received no salary increases after January 1, 1979. The Equal Pay Act in no way grants an employee an inherent right to receive wage increases. Rather, the Act focuses on whether an employee is paid at a lower *rate* than a comparable employee of the opposite sex. The Affidavit of Denise Hatter establishes that no associate attorney employed by King & Spalding was paid at a higher rate than plaintiff at any time during 1979. In fact, the Hatter Affidavit shows that plaintiff was the highest paid associate in the firm in 1979. In light of these facts, it is clear that plaintiff has no claim whatsoever under the Equal Pay Act.

III.

COUNT III OF PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Count III of Plaintiff's Complaint alleges a pendent state law claim for breach of contract. If Defendant's Motions To Dismiss Counts I and II are granted, there will be no federal question before the Court and Count III should also be dismissed. In *United Mine Workers v. Gibbs,* 383 U. S. 715, 726 (1966), the Supreme Court explained that "if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." This Court has directly applied the *Gibbs* standard in cases involving pendent state claims. See *Peller v. Retail Credit Co.,* 359 F. Supp. 1235, 1237 (N. D. Ga. 1973), aff'd. 505 F. 2d 733 (1974); *Dudley v. Southeastern Factor & Finance Corp.,* 315 F. Supp. 1019 (N. D. Ga. 1970), reversed on other grounds 446 F. 2d 303 (5th Cir. 1971), cert. den. 404 U. S. 858 (1971).

As the Affidavit of James M. Sibley reveals, associates are not employed by King & Spalding for any particular term. Rather, the firm and the associate understand that an associate is free to leave at any time that he or she chooses. Similarly, the firm retains its right to discharge an associate at any time. In short, associates, including plaintiff, are hired by the firm for an indefinite term and fall within the statutory rule that "[a]n indefinite hiring may be terminated at will by either party." Ga. Code Ann. § 66-101; *see Lambert v. Georgia Power Co.,* 181 Ga. 624 (1936); *Ely v. Stratoflex,* 132 Ga. App. 569 (1974).

Under Georgia law, an employment contract which is terminable at will imposes no executory obligations on either party and can be terminated by either party for any reason or no reason at all. *Odom v. Bush,* 125 Ga. 184 (1906); *Lowe v. R. C. Cola Co.,* 132 Ga. App. 37, 40-41 (1974). In a recent opinion, the Georgia Court of Appeals applied this principle in holding that an employee at will could not assert a claim for breach of contract based on his employer's failure to promote him. The Court explained:

> "[T]he contract was for an indefinite term and was terminable at will; and, as Murphine concedes in these circumstances, no claim for failure to promote can be maintained. 'It is the general rule that a hiring indefinite as to time is terminable at the will of either party and creates no executory obligations. '. . . The oral promises [to promote] could not be enforced because the underlying employment contract being terminable at will, is unenforceable."
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> *Murphine v. Hospital Authority of Floyd County,* 151 Ga. App. 722, 723 (1979).

This opinion applies with equal force to the facts of this case and bars plaintiff's claim of breach of contract.

CONCLUSION

For the foregoing reasons explained in Section I above, Count I of plaintiff's Complaint should be dismissed for lack of subject matter jurisdiction. For the reasons explained in Sections II and III above, Counts II and III of plaintiff's Complaint should be dismissed

for failure to state a claim upon which relief can be granted.

Respectfully submitted,

LOKEY AND BOWDEN

By /s/ Hamilton Lokey

/s/ Gerald F. Handley

Attorneys for Defendant
King & Spalding

NOTICE TO TAKE DEPOSITION

To: Elizabeth Anderson Hishon and
Emmet C. Bondurant, As Attorney for Plaintiff

PLEASE TAKE NOTICE THAT pursuant to Rule 30 of the Federal Rules of Civil Procedure, defendant King & Spalding will, through its attorneys, take the deposition under oral examination of plaintiff Elizabeth Anderson Hishon at 9:30 A.M. on Monday, April 7, 1980 in the offices of Lokey and Bowden at Suite 2500, Tower Place, Atlanta, Georgia 30326.

Said deposition will be limited to questions raised by defendant's Motions to Dismiss as to whether plaintiff has properly invoked the jurisdiction of this Court by timely filing a charge of discrimination with the Equal Employment Opportunity Commission within 180 days of any alleged act of discrimination by defendant. Defendant reserves its right to depose plaintiff as to all other matters at a later date, should the Motions to Dismiss not be granted. You are requested to bring with you any and all documents or other tangible things in

your possession or to which you have access which relate or pertain to the subject matter of defendant's Motions to Dismiss and your allegations that you timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission within 180 days of any act of alleged discrimination by defendant.

The deposition noticed herein will continue from day to day until its conclusion.

This 31st day of March, 1980.

LOKEY AND BOWDEN
By /s/ Hamilton Lokey

/s/ Gerald F. Handley

Attorneys for Defendant

March 31, 1980

Judge Newell Edenfield
United States District Court
Northern District of Georgia
Richard Russell Building
Atlanta, Georgia 30303

Re: Elizabeth Anderson Hishon v. King & Spalding C. A. No. 80-326A

Dear Judge Edenfield:

The above litigation, in which I represent the plaintiff and Ham Lokey represents the defendant, has been assigned to Your Honor.

Because of the nature of the issues involved, I believe that it would be helpful for Your Honor to schedule a very early chambers conference with counsel for the purpose of (a) establishing an orderly sequence in which threshold legal issues raised by the defendant can be resolved, (b) deferring discovery on other issues until the threshold issues have

been resolved, and (c) the entry of an appropriate protective order protecting the confidentiality of information disclosed by discovery, and other similar matters.

While I would prefer to treat this case just like any other case, the fact is that this case is not like any other case in which I have been involved.

Unlike most litigation, all of the parties are lawyers and friends with whom I have previously had very warm and close relationships and for whom I have a high regard. The plaintiff, Betsy Hishon, is the wife of my partner Bob Hishon, and is now an associate of Haas, Holland, Lipshutz, Levison & Gibert, one of Atlanta's fine law firms. The defendant, King & Spalding, is perhaps Atlanta's most prestigious law firm with which my partner Bob Miller's younger brother, Jim, is an associate, and my partner Eric Ranney's brother-in-law, Clarence Ridley, is a partner.

The decision to lodge a charge of sex discrimination against a major law firm like King & Spalding is not one that has been made lightly and without careful consideration of the consequences. At the same time, we recognize that discovery in this case is likely to involve some of the most private and sensitive decisions that a law firm makes—including its evaluation of the professional qualities of its present and former partners and associates, and, in the damage phase of the case, the compensation of its partners.

I don't want to be forced to explore these sensitive issues by discovery unless it becomes necessary to do so in the course of the litigation—nor do I want King & Spalding to feel that discovery into their private affairs is being used as any kind of lever to coerce the firm to settle a claim which it believes to be without merit.

For these reasons, I want to take the unusual step of proposing procedures which I believe are pri-

marily for the benefit of the other side, but which I believe are reasonable and justified by the nature of the parties and the issues.

1. *Early Resolution of Threshold Issues*

Although King & Spalding has not yet answered, there are at least two threshold issues which I anticipate will be raised as defenses and which I believe the Court should resolve at the outset, before allowing discovery to proceed as to other issues.

A. *Whether the partnership decisions of a law firm are subject to Title VII.*

King & Spalding will probably contend that Title VII does not apply to its decisions as to whom from among its associates it will promote to partnership, and that the firm is, therefore, free to exclude women, blacks or Jews or any other invidious classes from the partnership.

Although we believe that this issue has been resolved the other way by at least one district court [*see Lucido v. Cravath, Swaine & Moore,* 425 F. Supp. 123 (S. D. N. Y. 1977), *cf.* Note, *Applicability of Federal Antidiscrimination Legislation to the Selection of a Law Partner,* 76 Mich. L. Rev. 2826 (Dec. 1977)], the question is plainly a threshold issue that can and should be decided at the outset with discovery limited to that issue.

If King & Spalding were to prevail on this threshhold question, discovery on the merits aimed at establishing that it has in fact discriminated against women and other minorities in its employment, promotion and compensation decisions, as well as discovery into matters of partner compensation for the purpose of establishing damages under Title VII, would be moot.

If the plaintiff prevails on this threshhold issue, then discovery can then proceed into the liability

phase of the case*—not prematurely, but as a matter of necessity.

B. *Whether plaintiff's claim is premature.*

King & Spalding may contend, based on Your Honor's ruling in *Grimes v. Pitney-Bowes, Inc.*, Civil Action No. C79-779A (Dec. 1979), that, because the EEOC issued a right-to-sue letter to plaintiff in accordance with the EEOC's regulations before expiration of the 180-day conciliation period, the complaint is premature and should be stayed until the end of the 180-day period.

If such a motion is made, it should be also addressed promptly at the outset before the commencement of discovery as to other issues. In that event, the plaintiff will want to conduct limited discovery for the purpose of establishing of record the parties' unsuccessful attempts at conciliation and that there appears to be no reasonable likelihood that further attempts at conciliation will accomplish anything but delay.

2. *Bifurcation of Liability and Damages*

I recognize that any law firm would be reluctant to disclose matters relating to the profitability and the method of determining the amount and trends of partnership income to other lawyers even under a protective order.

So that no one will feel that we are attempting to take unfair advantage of this fact in order to put pressure on the defendant, we would propose that the Court bifurcate the trial of liability and damages, and

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*Consistent with this approach that the case proceed in stages, and that no issue need be addressed (or discovery be required) in advance of the necessity for doing so, plaintiff is proposing that the Court try the liability phase of the case in advance of and separate from the damage phase so that King & Spalding will not have to reveal income and profitability information in discovery until plaintiff has first established liability.

stay discovery as to damages until liability has first been determined in favor of the plaintiff.

3. *Protective Order Placing Discovery Under Seal*

It is inevitable that many of the facts that are likely to be disclosed during merits discovery may, patentially at least, be embarrassing to many fine lawyers who were formerly or are presently practicing with King & Spalding. To avoid unnecessarily embarrassing any of these members of the Bar, I believe that the Court should enter a comprehensive protective order placing all answers to interrogatories by either side, the depositions and documents (and perhaps even briefs and transcripts of any hearings) under seal. The Court may also want to consider holding all hearings *in camera*.

In short, we are prepared to agree to any reasonable protective order, so that the case can be litigated fully and fairly, without any party being under any pressure to avoid publicity or public embarrassment.

Very truly yours,

/s/ Emmet J. Bondurant
Emmet J. Bondurant

EJB:emb
cc: Hamilton Lokey, Esq.

April 16, 1980

Hamilton Lokey, Esq.
Lokey & Bowden
2500 Tower Place
3340 Peachtree Road, N. W.
Atlanta, Georgia 30326

Re: *Hishon v. King & Spalding*

Dear Ham:

I have reviewed Plaintiff's First Interrogatories to King & Spalding in the light of Judge Edenfield's

ruling in chambers on Tuesday, April 15th. Judge Edenfield ruled that he wanted to consider initially only the question of whether Title VII applied to King & Spalding's decisions with respect to Mrs. Hishon, and that he does not want to consider King & Spalding's statute of limitations defense until some future date. Judge Edenfield also made it clear that he would not allow any discovery related to King & Spalding's evaluation of the individual plaintiff at this time.

In light of these rulings, I would like for King & Spalding to answer Interrogatory 1, Interrogatory 5, Interrogatories 6, 7 and 8 (all of which relate to King & Spalding's interstate commerce defenses), Interrogatory 10, Interrogatory 12, Interrogatory 13, and Interrogatory 14.

Since the remaining interrogatories relate either to your statute of limitations defense or request the identification of types and categories of records maintained by King & Spalding that would be relevant to the merits, these interrogatories need not be answered or otherwise responded to at this time.

I do understand, however, that you have agreed on behalf of King & Spalding that the firm will preserve all documents identification of which is called for in the First Set of Interrogatories (No. 15, for example) even though certain of the interrogatories are not required to be answered at this time.

If you or King & Spalding find it unduly burdensome to respond to a particular interrogatory, I would suggest that you discuss the specific problem with me informally and perhaps we can reduce the burden by agreement or stipulation.

Sincerely,

/s/ Emmet J. Bondurant
Emmet J. Bondurant

EJB:emb

cc: Judge Newell Edenfield
Mrs. Elizabeth A. Hishon

ORDER

Counsel for both parties have moved the Court for an early determination of the threshhold issue raised in paragraph 1 of the Motions to Dismiss filed by defendant King & Spalding, in which the defendant seeks dismissal of Count One of the complaint on the ground that Title VII does not apply to the decisions of defendant with respect to the plaintiff. It appears to the Court that these contentions involve controlling questions which should be decided before discovery proceeds to other issues, and that disposition of this litigation will be materially advanced by an early ruling on these issues.

IT, THEREFORE, IS HEREBY ORDERED:

(1) That the parties are hereby granted 90 days in which to complete discovery limited to the threshhold issue stated above;

(2) That the plaintiff shall have until 30 days after the completion of discovery within which to file her brief or other response to the defendant's Motions to Dismiss directed to the threshhold issue stated above, and defendant shall have 30 days thereafter to file a reply brief or other responses; and

(3) That all other matters, including briefing by the plaintiff pertaining to the remaining issues raised by the defendant's Motions to Dismiss and discovery by either

party on the merits, is hereby stayed and deferred until further order of the Court.

This 23rd day of April, 1980.

/s/ Newell Edenfield
United States District Judge

Entry of the within and foregoing
Order is hereby consented to
this 21st day of April, 1980.

/s/ Emmet J. Bondurant
Attorney for Plaintiff

/s/ Hamilton Lokey
Attorney for Defendant

ORDER

The parties having hereto consented and good cause having been demonstrated to the Court and the Court having determined that the subject matter of this litigation and the discovery relative thereto will involve matters of a personal and private nature which could adversely affect, not only the parties to this litigation, but third parties as well and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,

IT IS HEREBY ORDERED:

(1) All documents and tangible things produced or made available to a party in this litigation by any other party, whether pursuant to a request for production, subpoena, consent, or otherwise, shall be maintained in strictest confidence, shall not be disclosed to any person other than the parties, the attorneys and representatives of parties actually involved in the preparation of this action

for trial, or witnesses involved in this action, and shall be used only for the purpose of preparing and prosecuting the above-styled action. All documents produced by a party which are not admitted in evidence at the trial of this action shall be returned, along with any copies to the party originally producing the document immediately following final judgment. All documents and things which are produced by a party and which are admitted as evidence at the trial of this action shall be maintained by the Clerk of the Court under seal and shall not be disclosed to any person pending further order of this Court.

(2) All responses to interrogatories or requests for admissions shall be maintained in strictest confidence and shall not be disclosed to any person other than the parties, the attorneys and representatives of parties actually involved in the preparation of this action for trial and witnesses involved in this action. All such responses on file with the Court shall be maintained by the Clerk under seal and shall not be disclosed to any person pending further order of the Court.

(3) The transcript of all depositions taken in the course of this litigation shall be held in confidence and shall not be disclosed to any person other than the parties, the attorneys and representatives of the parties actually involved in this action and the witness whose deposition was taken. The court reporter recording and preparing the transcript of any deposition shall be given a copy of this order and shall abide by its terms. The originals of all deposition transcripts shall be maintained by the Clerk of Court under seal pending further order of this Court.

(4) All pleadings, affidavits and briefs filed in this case, other than plaintiff's complaint and defendant's answer, shall be maintained by the Clerk of Court under seal, pending further order of this Court and after the date of this order all documents filed by the parties shall be contained in envelopes containing the caption of the case and the following legend:

FILED UNDER SEAL AND SUBJECT TO PROTECTIVE ORDER OF THE UNITED STATES DISTRICT COURT.

This 23rd day of April, 1980.

/s/ Newell Edenfield
United States District Judge

Entry of the within and foregoing
Order is hereby consented to
this 21st day of April, 1980.

/s/ Emmet J. Bondurant
Attorney for Plaintiff

/s/ Hamilton Lokey
Attorney for Defendant

PLAINTIFF'S FIRST INTERROGATORIES TO KING & SPALDING

Plaintiff requests that defendant King & Spalding answer in writing, and under oath, the following written interrogatories within thirty (30) days of the date of service hereof in conformity with Rule 33 of the Federal Rules of Civil Procedure.

Definitions and Instructions

As used in these interrogatories, the following terms shall have the following definitions:

1. *Defendant* means King & Spalding and all partners, associates, employees, agents, attorneys and other persons employed by or acting for or on behalf of King & Spalding.

2. *Associate* shall mean a member of the Bar employed by defendant, but excluding partners in defendant.

3. *Time Period* shall mean January 1, 1972—December 31, 1979, unless a different time period is specifically stated.

4. *Document* shall mean letters, reports, records, transcriptions, memoranda, minutes, papers, stenographic or handwritten notes, writings, magnetic tapes, discs, and other media, computer cards, tapes, printouts or other computer or machine readable records, statistical computations, compilations, studies, publications, books, and all other forms of recording and preserving information.

Whenever an interrogatory requests that defendant "identify" a person or document or oral communication, the following information is being requested and is hereby incorporated by reference as a part of each interrogatory, and must be answered accordingly:

1. *Person*—To identify a natural person, please state his full name, present or last known address, and his present or last known position or business affiliation (designating which);

2. *Document*—To identify a document means to provide the following information even though the document is deemed privileged or subject to any claim of privilege:

(a) The title or other means of identification of each such document:

(b) The date of each such document;

(c) The author of each such document, including his name, address, telephone number, and employer;

(d) The recipient or recipients of each such document, and for each recipient listed include his name, address, telephone number, employer and date of receipt;

(e) The present location of each such document in the care, custody, or control of defendant;

(f) The names, addresses and telephone numbers of any and all persons who have custody or control of each such document;

(g) Whether defendant claims any privilege with respect to each such document, and, if so, the factual and legal basis for the alleged privilege.

3. *Oral Communication*—To identify an oral statement, representation, or other oral communication, please state the nature of the communication, the substance of the communication, by whom and to whom such communication was made, the date of the communication, all persons present at the time of the communication who witnessed or heard the communication. and the place at which the communication occurred.

Attachment of Copies of Documents in Lieu of Identification

In lieu of identification of a document, defendant may attach a legible copy of the documents to its answers to these interrogatories, *provided* that the documents so at-

tached are specifically marked so as to indicate the particular interrogatory to which each document is deemed responsive.

INTERROGATORIES

1.

Please provide the following information with respect to the defendant:

(a) When was the defendant founded and by whom?

(b) If the defendant is the successor to any previous law firms, please provide the following information with reference to each such antecedent law firm:

(1) The name(s) of each such antecedent law firm.

(2) The dates of existence of each such antecedent law firm.

(3) The names of the partners of each such antecedent law firm.

(c) (1) Has the defendant or any partner thereof prepared any document which describes or summarizes the history of the defendant?

(2) If so, please identify each such document.

(d) (1) When did defendant revert to the name "King & Spalding"?

(2) Please identify all documents which refer to the reasons that defendant decided to use the name "King & Spalding."

(3) To the extent the reasons for the defendant's reverting to the name "King & Spalding" are

not fully stated in the document identification of which is requested in subparagraph (2) above, please state such reasons.

(e) (1) Did the defendant have a written partnership agreement during any of the Time Period?

(2) If the answer is "yes," please identify the partnership agreement and all amendments thereto.

(f) (1) Were there any portions of the partnership agreement of defendant in effect during the Time Period which are not fully set forth in the written partnership agreements referred to in subparagraph (e) above?

(2) If the answer is "yes," please state the full terms of the portions of the partnership agreement that were not in writing, and the time periods during which such unwritten portions of the partnership agreements were in effect.

(g) (1) Does the defendant have a partner's manual or other written compilation of its internal policies and procedures?

(2) If so, please (A) identify each such manual or compilation, (B) state how long such manual or compilation of the defendant has been in effect, and (C) describe generally the contents of each such manual.

(h) Please (1) describe the organizational structure of defendant during the Time Period, and (2) identify all committees, departments and administrative positions of the defendant, and state with respect to each such committee, department or administrative position:

(A) Its name.

(B) Identify all documents that set forth the duties and responsibilities of each such committee, department, or administrative position, or, if such duties are not fully set forth in written form, state the duties and responsibilities of each.

(C) The names of the members of each such committee or department, or the holder of any administrative position, during each year since January 1, 1972.

(D) Identify by categories the records maintained by each such committee, department or administrative position.

(i) With respect to "Administrative Partner" positions of the defendant which existed at any time during the Time Period, state the following information:

(1) Identify the title of the position.

(2) (A) Identify all documents which set forth or define the duties and responsibilities of such position, and (B) if such duties and responsibilities are not fully set forth in written form, state the unwritten powers and duties of each such position.

(3) Identify each person holding such position during the Time Period.

(4) Identify by type or category and a general description of contents the records maintained by or under the supervision of the person in such position.

(j) Does the defendant maintain minutes or other documents reflecting the substance of (1) general meetings

of defendant's partners, (2) general meetings of defendant's partners and associates, (3) meetings of committees of the defendant, and (4) meetings of departments of the law firm, and, if so, for what period of time have such minutes or other documents been maintained?

(k) Please identify all documents which refer to or reflect the following information pertaining to (1) the defendant's policy and procedure for determining capital or other financial contributions required by the defendant in connection with the admission of a new partner to the firm, (2) the percentage of ownership of the assets of the defendant acquired by a new partner, (3) the percentage or amount of firm capital or assets which a partner is entitled to receive as a matter of right from the firm upon voluntary withdrawal, expulsion, or death.

(l) Please (1) identify all documents which set forth the procedure, method, system or criteria used by the defendant or any committee thereof to determine the compensation of partners in defendant, and (2) if such procedure or method is not fully set forth in any documents, please state the procedure, method, system or criteria used by the defendant to determine the compensation of partners.

(m) (1) Did the defendant maintain professional malpractice insurance during the Time Period?

(2) If so, please state the monetary limits of such policies applicable to errors, omissions or professional malpractice by (A) partners of defendant, (B) associates of defendant.

(n) (1) Did the defendant have any pension, profit sharing or retirement plan in effect during the Time

Period that covered both partners and associates; if so (2) please identify each such plan and any amendments thereto.

2.

(a) Please identify all partners who were ultimately admitted to partnership in the defendant, but whom the defendant declined to make partners at the time that any other member of their "class" was admitted to partnership.

(b) With reference to each individual identified in response to Interrogatory 2(a) above, please identify all documents which refer to, reflect or evidence (1) any recommendation or decision that defendant make, refrain from making, or delay making the individual a partner in defendant at the time that other members of the individual's class were being considered, and (2) that defendant reconsider its former decision not to make such individual a partner after other members of the same class had been made partners, and (3) the evaluation of the individual professional performance, personal characteristics of eligibility or fitness for partnership in defendant.

(c) Identify all minutes or other records of any meeting of defendant (or of any committee thereof) at which any vote was taken to make or recommend making, or refrain from making, or delay making said individual a partner.

3.

With respect to plaintiff, please state the following information:

(a) Please state the dates of plaintiff's employment by the defendant.

(b) Please state the amount of plaintiff's compensation in (1) salary, and (2) bonus, during each calendar year of her employment by defendant.

(c) Please identify (1) all documents which refer to, reflect or evidence any evaluation of plaintiff made by defendant or any partner or associate of defendant at the time plaintiff was interviewed either at Columbia University or in Atlanta, and (2) any documents which reflect any recomemndation or vote to offer, or to refrain from offering, employment to plaintiff in 1971 or 1972.

(d) Please identify all documents which constitute or reflect any formal or informal evaluations by defendant (or any partner, associate, committee or employee thereof) of the quality of plaintiff's work as a lawyer, her personal attributes, her progress toward or eligibility for partnership, the profitability of or fees generated by her legal work, the clients brought to the defendant by plaintiff, or her relative merits in comparison with other associates.

(e) Please identify all documents received by defendant from clients or other persons who were not partners in or employed by defendant that refer to or comment upon the quality of plaintiff's work as a lawyer, her personal attributes, her progress toward or eligibility for partnership, or her relative merits in comparison with other associates.

(f) Please identify all documents which refer to, reflect or comment upon (1) any meeting between one or more partners of defendant at which plaintiff, or the quality of plaintiff's work as a lawyer, her personal attributes, her progress toward or eligibility for partner-

ship, or any other qualifications for partnership, were considered, discussed, or voted upon, (2) any meeting between one or more parties of defendant and plaintiff at which such partner(s) of defendant communicated to plaintiff any evaluation of plaintiff's quality of work as a lawyer, her personal attributes, her progress toward or eligibility for partnership, her relative merits in comparison with othe associates, and (3) identify all oral communications of such evaluations of plaintiff that were communicated by defendant, or any partner thereof, to plaintiff.

(g) Please identify all computer reports or other other records that reflect on a monthly, quarterly, annual or other basis (1) the number of billable hours worked by plaintiff, (2) the hourly rates at which defendant billed services performed by plaintiff, (3) the fees collected by defendant for services performed by plaintiff, (4) the relative number of billable hours and profitability of plaintiff as compared with other associates or partners of defendant, and (5) the fees received by defendant from clients who were considered to have been brought to defendant by plaintiff.

(h) Please identify all communications passing between one or more partners of the defendant which refer to, reflect or contain:

(1) Any expression of opinion concerning plaintiff's quality of work as a lawyer, her personal attributes, her progress toward partnership, her relative merits in comparison with other associates, or any recommended, proposed or suggested action with reference to plaintiff.

(2) The eligibility or desirability of plaintiff's becoming a partner in defendant.

(3) Any claims made by plaintiff or that plaintiff might have against the defendant under Title VII of the Civil Rights Act of 1964, the Equal Pay Act, or any other federal law or regulation.

(4) The continuation, duration or termination of plaintiff's employment by the defendant, or the placing of any limitations on plaintiff's work, her access to clients or associates of the firm.

(5) Any actual or potential charge of employment discrimination filed by plaintiff.

(6) Any actual, suggested or proposed action by the defendant resulting from or connected with the filing of a charge by plaintiff with the EEOC.

(7) The consideration by defendant as a whole, or by any department, committee or group of partners of defendant, of whether the plaintiff should or should not become a partner in defendant.

(8) The reasons that defendant refused to make plaintiff a partner in the defendant.

(9) Any objection by any partner of the defendant to any proposal, recommendation or action by defendant (or by any department, committee or partner) that plaintiff be admitted or not be admitted or voted upon for admission as a partner in defendant, or that any previous decision made by defendant be (or not be) reconsidered or modified.

4.

If you contend that defendant's decision not to make plaintiff a partner in defendant was based on any specific

errors, omissions or deficiencies in plaintiff's performance of her professional duties and responsibilities in representing or on behalf of any clients of the defendant, please identify each such matter by stating:

(1) the name of the client;

(2) the name of the matter;

(3) the file or other identifying number of the matter; and

(4) describe the specific error, omission or other difficulty in plaintiff's performance; and

(5) identify (A) the persons whom defendant contends have personal knowledge of the facts or on whom defendant intends to rely for the expression of any opinion concerning any alleged errors, omissions or deficiencies in plaintiff's performnce in connection with a specific matter or client, and (B) the documents that defendant contends refer to, reflect or evidence any error, omission or deficiency in plaintiff's performance.

5.

Please identify all documents which state, in whole or in part, the standards, criteria, procedures or policies utilized by defendant during the Time Period concerning the following subjects:

(a) Evaluation of Associate Performance, including but not restricted to (1) criteria for evaluation of associates, (2) coordination of evaluation by partners, (3) communication to partners and to associates individually the results of associate evaluations, (4) criteria for

admission to partnership, and (5) decisions or recommendations of termination of associates.

(b) Criteria for advancement to partnership.

(c) Compensation policies for legal personnel.

(d) Establishment of number of lawyers to be hired, or admitted to partnership.

(e) Equal employment practice policies pertaining to legal personnel.

(f) Hiring, including but not limited to (1) criteria for job offer, (2) Recruiting Committee procedures, (3) policies regarding employment of lawyers.

6.

With reference to the Fifth Defense stated in the answer that "[p]laintiff's claims under Title VII are barred because defendant is not a person engaged in an industry affecting commerce within the meaning of Title VII," please state the following information:

(a) Please state all facts on which defendant relies to support such contention.

(b) Please identify all documents on which defendant relies to support such contention.

(c) Please identify all persons who are known to defendant or to defendant's attorneys to have personal knowledge of such facts.

7.

With reference to the allegations of paragraph 2(a) of the Eighth Defense of the answer that "defendant de-

nies that it is a person engaged in an industry affecting commerce," please state the following information:

(a) Please state all facts on which defendant relies to support such contention.

(b) Please identify all documents on which defendant relies to support such contention.

(c) Please identify all persons who are known to defendant or to defendant's attorneys to have personal knowledge of such facts.

8.

(a) Does defendant contend that it is not engaged in interstate commerce?

(b) If so, please state the following information with respect to defendant's last complete fiscal year:

(1) The total fees received by the defendant for the rendition of legal services and the amount of fees billed by defendant's (A) Atlanta office and (B) defendant's Washington office.

(2) The total revenues of the defendant derived from legal services rendered to clients with respect to litigation pending in Georgia, real estate transactions involving real property located exclusively in Georgia, bond or other securities, offerings for offerors located exclusively in Georgia where all the purchasers located within Georgia.

(3) The total revenues derived by defendant from the following:

(A) The rendition of legal services with reference to any court or administrative proceedings located outside Georgia.

(B) The rendition of legal services with reference to any real estate transactions involving property outside the State of Georgia.

(C) The rendition of legal services in connection with any offering or sale of securities by an issuer having its principal place of business outside the State of Georgia, or which required registration, or exemption under the laws of a state other than Georgia, or which was closed outside the State of Georgia.

(D) The rendition of any other legal services to clients whose principal offices were located outside the State of Georgia, and which involved the application of procedural or substantive law of a state other than Georgia.

(4) (A) The number of trips made by lawyers of defendant to points outside Georgia in the course of rendering professional services for clients, (B) the number of days spent by lawyers of defendant outside the State of Georgia in the course of rendering professional services for clients, and (C) the cost of such trips to the defendant or its clients.

(5) (A) The number and (B) cost of long distance telephone charges incurred by defendant in the course of rendering professional services for clients.

9.

Please (a) identify all documents which refer to reflect, or support the allegations made by defendant in the following paragraphs of the Eighth Defense of its answer or which are inconsistent with such allegations, and (b)

identify all persons known to defendant or to defendant's attorneys to have personal knowledge of the facts alleged in such paragraphs, or of facts inconsistent with such allegations:

(1) Eighth Defense, Paragraph 11.

(2) Eighth Defense, Paragraph 12, second full paragraph.

(3) Eighth Defense, Paragraph 12, third full paragraph.

(4) Eighth Defense, Paragraph 12, fourth full paragraph.

(5) Eighth Defense, Paragraph 13, first paragraph, first full sentence.

(6) Eighth Defense, Paragraph 17(a).

(7) Eighth Defense, Paragraph 17(c).

(8) Eighth Defense, Paragraph 17 (d).

(9) Eighth Defense, Paragraph 17(e).

(10) Eighth Defense, Paragraph 17(f).

10.

With reference to the allegations of Paragraph 9 of the Eighth Defense that defendant had a "practice of not employing permanent associates," please state the following information:

(a) When and how was this policy adopted?

(b) Is this policy reflected by any documents, and, if so, please identify all such documents?

(c) (1) Has the defendant made any exceptions to the policy since its adoption? If so, (2) please describe each individual for whom an exception was made, (3) the reasons for the exception, and (4) identify all documents reflecting such reasons.

(d) (1) Under defendant's policy, does an associate have the alternative of remaining as an employee of the firm? If so, please state (2) the length of time that the associate is permitted to remain an employee of the firm, and (3) any changes or modifications in the compensation, terms and conditions of employment that would apply to an associate who has been denied partnership that would not be applied to other associates who have not been refused admission to partnership.

11.

With reference to the allegations of paragraph 17(i) of the Eighth Defense of defendant's answer that defendant "denies that it has failed to take affirmative action with respect to female lawyers," please state the following information:

(a) Describe all "affirmative action with respect to female lawyers" taken by defendant during the Time Period.

(b) With respect to each such "affirmative action," state whether such affirmative action was objected to or opposed by any partner of defendant and, if so (1) identify the partner opposing such action, and (2) state the grounds of his opposition.

(c) Identify all documents that refer to, reflect, or support your contention that defendant took "affirmative action with respect to female lawyers."

(d) Identify all persons having personal knowledge of the fact that defendant took "affirmative action with respect of female lawyers."

12.

(a) Has the defendant given any consideration to the applicability of Title VII of the Civil Rights Act to (1) defendant's practices, policies, procedures or decisions to employ, refrain from employing, discriminate in the employment of, or terminate the employment of lawyers as associates in defendant, and (2) defendant's decision to make, refrain from making, or delay making or "inviting" an associate to become a partner in defendant, other than in specific connection with the charge filed by plaintiff with the EEOC, and the pending suit filed by plaintiff?

(b) If the answer to subparagraph (a) is "yes," identify all documents which refer to, reflect or evidence defendant's consideration of any of the subjects described in subparagraph (a).

13.

(a) Has defendant employed any outside consultant to make any evaluation or recommendation with respect to the organizational structure of the defendant?

(b) If so, please identify such consultant and identify any report or recommendations made by such consultant.

14.

Please identify the partners or employees of defendant who are primarily responsible for (a) collecting the information contained in the answers to these interrogatories, and (b) locating the documents identification of which is requested in these interrogatories.

15.

(a) Does the defendant presently have documents in its possession from which the following information for the period January 1, 1965-December 31, 1979 can be derived at a later stage of this case?

(1) The number of partners in defendant who were: (A) males, and (B) females.

(2) The identity and number of associate lawyers employed by the firm who were: (A) males, and (B) females.

(3) The identity and number of lawyers or law students who were interviewed by the defendant for possible employment who were: (A) males, and (B) females.

(4) The identity and number of lawyers or law students to whom the defendant extended offers of employment who were: (A) males, and (B) females.

(5) The identity and number of law students who were employed by the defendant for any portion of the summer or at any other time of the year who were: (A) males, and (B) females.

(6) The identity and number of lawyers who became partners of the defendant who were: (A) males, and (B) females.

(7) The identity and number of lawyers employed by the defendant who were terminated at the initiative or suggestion of the defendant who were: (A) males, and (B) females.

(b) If the defendant does not have information in any of the categories described above for the complete

period January 1, 1965-December 31, 1979, please state the dates for which such information is available.

(c) Will defendant voluntarily agree without Court order to preserve records from which the information described in subparagraph (a) can be derived, pending a final disposition of this case?

/s/ Emmet J. Bondurant
/s/ Jeffrey M. Smith

Attorneys for Plaintiff

PLAINTIFF'S FIRST NOTICE TO PRODUCE TO KING & SPALDING

Plaintiff requests that defendant King & Spalding produce for inspection and copying by plaintiff, in conformity with Rule 34 of the Federal Rules of Civil Procedure, all documents, identification of which is requested in Plaintiff's First Interrogatories to King & Spalding served contemporaneously herewith which are in the custody, control or possession of the defendant, of any present or former partner thereof, or defendant's attorneys, at the offices of Trotter, Bondurant, Griffin, Miller & Hishon, 2200 First National Bank Tower, 2 Peachtree Street, N. W., Atlanta, Georgia, at 10:00 a.m. on May 12, 1980.

If defendant prefers, plaintiff will inspect such documents at the offices of defendant or defendant's attorneys, or at such other time and place as may be agreed on by the parties.

/s/ Emmet J. Bondurant
/s/ Jeffrey M. Smith

Attorneys for Plaintiff

The Equal Employment Opportunity Commission moves for leave to participate in this suit as *amicus curiae*.

MEMORANDUM IN SUPPORT

The Commission is the agency charged by Congress with enforcing Title VII, Civil Rights Act of 1964, as amended, 42 U. S. C. 2000e *et seq.* (1976), and other federal employment discrimination statutes. See Reorganization Plan No. 1 of 1978, 43 F. R. 19807 (May 9, 1978). The motion to dismiss now before this court presents an important question concerning the scope of Title VII and related statutes: Whether a law firm's decisions as to whom it will admit to partnership are "employment" decisions subject to federal anti-discrimination laws.

The Commission has filed briefs *amicus curiae* on this issue in two other Title VII cases, *Lucido v. Cravath, Swaine & Moore* (No. 75 Civ. 6341: L. P. G., S. D. N. Y.) and *Blank v. Sullivan & Cromwell* (75 Civ. 189: C. B. M., S. D. N. Y.). It is in the public interest that the Commission present its views to this court *Cf.* Rule 29, F. R. App. P.

The Commission understands that there is a protective order entered in this case which places under seal all documents filed subsequent to the complaint. The Commission, if granted leave to participate, agrees to abide by the terms of this order in the same manner as the plaintiff.

Respectfully submitted,

LEROY D. CLARK
General Counsel

JOSEPH T. EDDINS
Associate General Counsel

LUTZ ALEXANDER PRAGER

/s/ SUSAN BUCKINGHAM REILLY
Attorneys

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

2401 E Street, N. W.
Washington, D. C. 20506
(202) 634-6150

May 14, 1980

MEMORANDUM IN OPPOSITION TO MOTION OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Comes now the defendant in this case and objects to the participation of the Equal Employment Opportunity Commission as Amicus Curiae or in any other capacity in this suit.

1.

Plaintiff in this case initiated her action against defendant by filing a complaint with the Equal Employment Opportunity Commission (hereinafter EEOC) on November 19, 1979. Thereafter, on November 29, 1979, EEOC unilaterally issued its right to sue letter and thereupon closed its file on this matter. The basis of the right to sue letter was a statement of EEOC that it was too busy to deal with the complaint within 180 days. Having avoided its responsibility when it could have considered the issues in this case as the forum provided by statute, it is wholly inappropriate for the EEOC to now seek to enter this action in this court, either as a partisan on behalf of the plaintiff, or as an adviser to the court.

2.

EEOC acknowledges that it seeks to enter into this case at the request of the plaintiff. The plaintiff is not

an indigent. She is more than adequately represented by competent counsel, who are fully capable of presenting plaintiff's contentions to this court. There is therefore no need for the intervention of EEOC, unless it is designed to influence the court to accept the plaintiff's contentions relative to Title VII. For the EEOC to take a partisan position in this case in this court in support of the plaintiff's contentions raises serious questions as to the impartiality of the EEOC in its statutory function as the forum before which an employer must appear in response to a complaint of discrimination.

3.

Even if this court should decide to allow the EEOC to participate as *Amicus Curiae,* there is no reason to provide the EEOC with access to the discovery materials and papers protected from disclosure by the Consent Protective Order. The EEOC states that it desires to address the pure legal question of "Whether a law firm's decisions as to whom it will admit to partnership are 'employment' decisions subject to Federal antidiscrimination laws." To address this general question, the EEOC does not require access to materials regarding the specifics of plaintiff's claim against a particular law firm. Moreover, were the EEOC allowed access to discovery materials and allowed to express a view on the specifics of this case, the EEOC's role would be more akin to an intervenor under Rule 24B than to a traditional *Amicus Curiae.* The EEOC has not certified that this is an action of "general public importance" as required before it may seek leave to intervene. 42 USC § 2000e 5(f)(1). Further, because the EEOC failed to investigate and conciliate plaintiff's claim in this action, it could not bring its

own action. 42 USC § 2000e 5(f)(1). The Commission should not be allowed to utilize the *Amicus Curiae* device in order to circumvent its statutory duty to investigate and conciliate charges.

4.

The EEOC offers to abide by the Protective Order in effect in this case. Without challenging in any way the good faith of the Attorneys signing the motion for the EEOC, we do express genuine concern over the chances of a breach of the Protective Order should the EEOC have access to the discovery called for by the plaintiff in this case. We have complete confidence in local counsel to abide by the Protective Order. On the other hand, should these sensitive materials fall into the hands of unnamed persons in the heirachy of the EEOC, and be subsequently leaked to the public, the parties would be immediately and irreparably harmed. Our concern stems in part from the recent experience in the Northern District of Georgia in a case of some reknown where the attorney for the prosecution expressed his regrets as to leaks of information harmful to the defendants, assured the court of his innocence in the matter but stated that he could not control the actions of his superiors in Washington who were responsible for the transgressions.

We submit that the motion of the EEOC for leave to intervene in this case should be denied.

Respectfully submitted,

LOKEY AND BOWDEN

By: /s/ Hamilton Lokey
/s/ Gerald F. Handley

KING & SPALDING'S RESPONSE TO PLAINTIFF'S FIRST NOTICE TO PRODUCE

NOW COMES KING & SPALDING, named as defendant in this action, and, pursuant to Rule 34 of the Federal Rules of Civil Procedure, makes and files this Response to Plaintiff's First Notice To Produce, stating as follows:

1.

King & Spalding objects to plaintiff's request that King & Spalding produce documents for inspection and copying at the offices of plaintiff's counsel. All documents which are to be produced in response to plaintiff's First Notice will be produced at a time and place agreeable to counsel for the parties to this action.

2.

King & Spalding objects to Plaintiff's First Notice To Produce to the extent that it requests King & Spalding to produce any documents in the custody, control, or possession of any former partner of King & Spalding on the ground that said request is overly broad and unduly burdensome and upon the ground that a former partner is not a party within the meaning of Rule 34 of the Federal Rules of Civil Procedure.

3.

King & Spalding objects to plaintiff's First Notice To Produce to the extent that it seeks the production of confidential client information. King & Spalding also objects to plaintiff's First Notice To Produce to the extent that it seeks the production of confidential firm documents. King & Spalding is producing documents

under the Protective Order in this case, and subject to and without waiving its objection to producing confidential documents.

4.

King & Spalding objects to plaintiff's First Notice To Produce to the extent that it seeks the production of any documents other than the partnership agreement, and amendments thereto, in effect for King & Spalding during the period from January 1, 1972 through December 31, 1979, and the 1975 Memorandum, on the grounds that discovery of the contents, as opposed to the existence, of any of the other documents identified in King & Spalding's Response to Plaintiff's First Interrogatories, would relate either to a defense asserted by King & Spalding to plaintiff's claim or to the merits of this action, and discovery as to King & Spalding's defenses and the merits of plaintiff's claim has been stayed by the Court's Order of April 15, 1980, pending a ruling by the Court on King & Spalding's jurisdictional objections to plaintiff's claim. Accordingly, King & Spalding states that the only documents which it will produce for plaintiff's inspection and copying at this time are the partnership agreement and amendments thereto, in force and effect during the period from January 1, 1972 through December 31, 1978, and the 1975 Memorandum.

LOKEY & BOWDEN

/s/ Hamilton Lokey
/s/ Gerald F. Handley

Attorneys for Defendant

KING & SPALDING

THE ADMINISTRATIVE PARTNERS

A. *The Lawyer Administrative Partner.* The Lawyer Administrative Partner shall have overall responsibility for recruitment, employment, assignment, evaluation and supervision of all legal and paralegal personnel, with the mandate to insure that professional obligations are carried out on all client matters with quality, service and timely performance and with a view toward the harmony of working conditions for legal and paralegal personnel at King & Spalding. The following matters shall be the responsibility of the Lawyer Administrative Partner, with approval of the Executive Committee as to asterisked matters:

*1. *Evaluation of associate performance*

a. Formulation of criteria for evaluation of associates.

b. Coordination of evaluation by partners.

c. Communication to partners and to associates individually results of associate evaluation at least annually.

d. Establishment of criteria for admission to partnership.

f. Recommendations of termination of associates.

*2. ***Establishment of criteria for advancement in partnership***

*3. ***Lawyer assignment to areas of practice***

*4. ***Formulation of compensation policies for legal and paralegal personnel***

5. *Development of information with respect to work load of lawyers*

   a. Current

   b. Anticipated

   c. Trends in practice

*6. *Establishment of number of lawyers to be hired*

*7. *Equal employment practice policies pertaining to legal and paralegal personnel*

8. *Hiring*

   a. Criteria for job offer.

   b. Recruiting Committee procedures.

   *c. Policies regarding employment of experienced lawyers.

*9. *Policies to lawyer perquisites*

   a. Reimbursement of expenses

   b. Seminars and continuing education

   c. Routine vacation policies

*10. *Definition of area of practice for departmental administrative purposes*

11. *Summer associate orientation*

   a. Accommodations

   b. Practice assignments

   c. Social

12. ***Associate orientation***

   a. Practice

   b. Social

13. *Development of information with respect to profitability by areas of practice*

14. *Coordination of departmental administrative meetings, policies and procedures*

15. *Lawyer social functions*

16. *Annual partner physical*

B. *The Finance Administrative Partner.* The Finance Administrative Partner shall have overall responsibility for the financial health of the firm, its record keeping, billing and reporting procedures, including the following specifics (asterisked matters to be approved by the Executive Committee prior to action thereon):

*1. *Recommendations as to partner capital contribution*

2. *Procedures for borrowing funds*

3. *Projections of income, expenses, cash flow and value of participating units, both annually and over extended periods of time*

4. *Depreciation policies*

5. *Procedures for daily report and monthly financial reports*

   a. Forms

   b. Frequency

*6. ***Preparation of annual firm budget (ranging from major firm operations to such specifics as continuing education, recruiting, etc.)***

7. *Formulation of billing procedures*
   a. Frequency
   b. Coordination of fee statement format
   c. Billing of internal expenses
   d. Billing for disbursements
*8. *Establishment of billing rates of legal, paralegal and non-legal personnel*
9. *Expense management and controls*
10. *Formulation of statistical analyses requested by other administrative partners or the Executive Committee*
11. *Insurance*
   a. Fire and casualty
   b. Errors and omissions
   c. Liability
   d. Hospitalization and major medical
12. *Preparation of firm tax returns*
13. *Timekeeping*
14. *Pension and retirement plans*
15. ***Formulation of a firm contingency plan for economic depression***

C. ***The Office Administrative Partner.*** **The Office Administrative Partner shall have complete responsibility for hiring, orienting, paying, training, evaluating, assigning and terminating all firm non-legal personnel, including the following specific responsibilities (asterisked matters**

to be approved by the Executive Committee prior to action thereon):

1. *Non-legal personnel compensation*
2. *Non-legal prerequisites*
   a. Vacation policies
   b. Fringe benefits
   c. Seminars and continuing education
*3. *Equal employment practice policies for all non-legal personnel*
4. *Recruitment and training of all non-legal personnel*
5. *Procedures for evaluation of non-legal personnel*
6. *Termination of non-legal personnel*
7. *Assignment of non-legal personnel*
8. *Preparation and dissemination of firm policies with respect to all non-legal personnel*
9. *Determination of managerial structure and assignment of responsibilities of non-legal personnel*
   a. Office Manager-Administrator
   b. Bookkeeper-Controller
   c. Secretarial Supervisor
   d. Switchboard—receptionists
   e. Data processing—time records
   f. Messenger—supplies—mail clerks

g. Duplicating—printing

h. File room—record center

i. Building personnel coordination

j. Librarian

*10. *Determination of firm holidays*

*11. *Projection of space needs*

*12. *Assignment of all offices for all firm personnel*

13. *Office Equipment and systems*

14. *Furnishings and art*

15. *Library*

a. Books

b. Legal memos

c. Opinion letters

d. Disposal procedures

e. Circulation lists

In carrying out his duties with respect to non-legal personnel, the Office Administrative Partner shall discuss actions with respect to individual personnel with such partners or associates as he may deem appropriate (including always lawyers for whom such personnel work directly) and shall be responsible for uniform firm policies with respect to the conduct of all non-legal personnel.

D. ***The Client Administrative Partner.*** **The Client Administrative Partner shall have overall responsibility for the firm's obtaining, housing, servicing, billing and**

terminating clients. He shall be responsible for the firm's awareness of potential new clients and the ethical attraction of those which may be desirable to the firm. He will be responsible for the policies pertaining to entertainment of clients by lawyers, billing procedures, conflicts of interest between clients and, where necessary, termination of clients, including the following specifics (asterisked matters to be approved by the Executive Committee prior to action thereon):

*1. *Fee review procedures and policies*

*2. *Entertainment policies*

a. Partnership entertainment

b. Expense reimbursement for lawyer entertainment

*3. *Directorships*

4. *Lawyer referrals*

a. Lists of lawyers for referrals

b. Contacts with lawyers referring matters to the firm

*5. *Establishment of line of succession of partners responsible for specific clients*

6. *Conflicts of interest between clients*

7. *New client opportunities*

8. *Criteria for acceptance of new clients*

*9. *New areas of practice and criteria for establishment*

*10. *Client account write-offs*

11. *Client lists*
    a. Maintenance of alphabetized list of all clients
    b. Publication of new clients of firm
12. *Development of client profitability statistics*
*13. *Political and civic responsibilities and coordination of lawyer involvement*
14. *Maintenance and publication of lawyer outside involvement in political, civic and bar affairs*
*15. *Policies with respect to lawyer insider—opportunities for investments with or in clients*
*16. *Recommendations as to establishment of branch offices*

The Client Administrative Partner will work closely with the other administrative partners and keep them advised of client attitudes with respect to procedures in their respective departments. The Client Administrative Partner shall be attuned to the image of the firm in the eyes of its clients, the impact of the policies of the firm in the eyes of its clients, and in general, the entire public relations of the firm.

January 9, 1975

MEMORANDUM TO: All Firm Personnel

The partners of the firm at year-end voted to expand the firm's Executive Committee from three to five members and then elected Messrs. Gowen, Spalding, J. Sibley, Hale and Attridge as the Executive Committee.

The Executive Committee, in turn, has appointed four Administrative Partners to perform certain specific

duties proposed by the 1974 Study Committee. The Administrative Partners are as follows:

Lawyer Administrative Partner — James M. Sibley

Finance Administrative Partner — Harry C. Howard

Office Administrative Partner — Richard A. Denny, Jr.

Client Administrative Partner — Bradley Hale

The functions of the Administrative Partners will be more clearly described to you in subsequent communications by the administrators themselves or by lawyers to whom they delegate some of their responsibilities. Generally speaking, however, the Lawyer Administrative Partner will have the overall responsibility for employment and supervision of all legal and paralegal personnel. The Finance Administrative Partner will have responsibility for the firm's financial health, its record keeping, billing and reporting procedures. The Office Administrative Partner will have responsibility for all non-legal personnel and the physical aspects of the firm. The Client Administrative Partner will be responsible for the firm's policies pertaining to its clients.

We ask your cooperation in assisting the Administrative Partners and their designees with their work over the coming year. Any questions or suggestions which you may have regarding the firm's operations should be directed to the Executive Committee or the appropriate Administrative Partner.

/s/ Hughes Spalding, Jr.
For the Committee

HSJr:sh

KING & SPALDING'S ANSWERS AND OBJECTIONS TO CERTAIN OF PLAINTIFF'S FIRST INTERROGATORIES

NOW COMES KING & SPALDING, a partnership named as defendant in this action, and, pursuant to Rule 33 of the Federal Rules of Civil Procedure, makes and files these Answers and Objections to Interrogatories Numbered 1, 5, 6, 7, 8, 10, 12, 13 and 14 of plaintiff's First Interrogatories. Pursuant to Order of the Court and agreement of counsel, the remainder of plaintiff's First Interrogatories need not be answered at this time, and this defendant hereby objects to each and every one of such remaining interrogatories on the ground that they exceed the proper limits of discovery as defined by the Court in this action.

GENERAL OBJECTIONS

1.

This defendant objects to plaintiff's First Interrogatories to the extent that they seek information regarding any period of time other than the "Time Period" as defined in paragraph 3 of the Interrogatories on the ground that information regarding any other time is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence and on the further ground that the burden on this defendant to respond to interrogatories with regard to any other time far exceeds the value to plaintiff of the information sought.

2.

This defendant objects to plaintiff's First Interrogatories to the extent that they request this defendant to

"identify" documents on the grounds that said request is unduly burdensome and repetitious in light of plaintiff's Request for Production of Documents, which was filed contemporaneously with plaintiff's First Interrogatories and seeks the production of all documents identified in King & Spalding's responses to those interrogatories.

3.

This defendant objects to plaintiff's First Interrogatories to the extent that they seek the identification or disclosure of any communication or document protected from discovery by the attorney work-product doctrine or the attorney-client privilege.

RESPONSE TO INDIVIDUAL INTERROGATORIES

1.

Interrogatory No. 1.(a)-(b)

Please provide the following information with respect to the defendant:

(a) When was the defendant founded and by whom?

(b) If the defendant is the successor to any previous law firms, please provide the following information with reference to each such antecedent law firm:

(1) The name(s) of each antecedent law firm.

(2) The dates of existence of each such antecedent law firm.

(3) The names of the partners of each such antecedent law firm.

Response to No. 1.(a)-(b)

(a)-(b) This defendant objects to subparts (a) and (b) of Interrogatory No. 1 on the grounds set forth in General Objection No. 1 above, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant states that on January 1, 1885, Alex C. King and Jack J. Spalding formed a partnership for the general practice of law. The partnership of King & Spalding as presently constituted is the successor to the partnership formed by Messrs. King and Spalding in 1885. From 1885 until the present, the firm has existed under the following names:

January 1, 1885 - January 1, 1887—King & Spalding

January 1, 1887 - 1894—Calhoun, King & Spalding

1894-1903—King & Spalding

1903-1908—King, Spalding & Little

1909-1920—King, Spalding & Underwood

1920-1933—Spalding, MacDougald & Sibley

1934—Spalding, MacDougald, Sibley & Brock

1935-1943—Spalding, Sibley, Troutman & Brock

1943-1946—Spalding, Sibley & Troutman

1946-1956—Spalding, Sibley & Kelley

1956-1962—Spalding, Sibley, Troutman, Meadow & Smith

1962-Present—King & Spalding

Interrogatory 1(c)

(c) (1) Has the defendant or any partner thereof prepared any document which describes or summarizes the history of the defendant?

(2) If so, please identify each such document.

Response to Interrogatory 1(c)

(c) This defendant objects to subpart (c) of Interrogatory No. 1 on the grounds set forth in General Objection No. 1, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant states that neither the defendant nor any partner thereof has prepared any document which describes or summarizes the history of the defendant during the Time Period as defined in plaintiff's Interrogatories.

Interrogatory 1(d)

(d) (1) When did defendant revert to the name "King & Spalding"?

(2) Please identify all documents which refer to the reasons that defendant decided to use the name "King & Spalding."

(3) To the extent the reasons for the defendant's reverting to the name "King & Spalding" are not fully stated in the document, identification of which is requested in subparagraph (2) above, please state such reasons.

Response to Interrogatory 1(d)

(d) This defendant objects to subpart (d) of Interrogatory No. 1 for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant states:

(1) A law firm known by the name of King & Spalding has existed at several times as reflected in the answer to subparts (a)-(b) above. This defendant adopted the name of King & Spalding in 1962.

(2) None.

(3) The firm had, in 1962, and still has, a practice of inviting established lawyers from outside of the firm to join the partnership. The decision to adopt the name King & Spalding was made to avoid the possibility of changing the name of the firm to reflect or conform with the addition or withdrawal of established lawyers from the partnership.

Interrogatory 1(e)

(e) (1) Did the defendant have a written partnership agreement during any of the Time Period?

(2) If the above is "yes," please identify the partnership agreement and all amendments thereto.

Response to Interrogatory 1(e)

(e) (1) At various times during the Time Period, the firm has had a written partnership agreement in effect. At other times within the Time Period, there was no written agreement in effect, due generally to the fact that a new agreement was not immediately prepared or executed upon a change in the membership of the partnership.

(2) This defendant will produce a copy of the partnership agreements and all amendments thereto in effect during the Time Period.

Interrogatory 1(f)

(f) (1) Were there any portions of the partnership agreement of defendant in effect during the Time Period

which are not fully set forth in the written partnership agreements referred to in subparagraph (e) above?

(2) If the answer is "yes," please state the full terms of the portions of the partnership agreement that were not in writing, and the time periods during which such unwritten portions of the partnership agreements were in effect.

Response to Interrogatory 1(f)

(f) (1) See Response to Interrogatory 1(e) (1) above.

(2) Not applicable.

Interrogatory 1(g)

(g) (1) Does the defendant have a partner's manual or other written compilation of its internal policies and procedures?

(2) If so, please (A) identify each such manual or compilation, (B) state how long such manual or compilation of the defendant has been in effect, and (C) describe generally the contents of each such manual.

Response to Interrogatory 1(g)

(g) This defendant objects to subpart (g) of Interrogatory No. 1 for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant states:

(1) No.

(2) Not applicable.

Interrogatory 1(h)

(h) Please (1) describe the organizational structure of defendant during the Time Period, and (2) identify all committees, departments and administrative positions of the defendant, and state with respect to each such committee, department or administrative position:

(A) Its name.

(B) Identify all documents that set forth the duties and responsibilities of each such committee, department, or administrative position, or, if such duties are not fully set forth in written form, state the duties and responsibilities of each.

(C) The names of the members of each such committee or department, or the holder of any administrative position, during each year since January 1, 1972.

(D) Identify by categories the records maintained by each such committee, department or administrative position.

Response to Interrogatory 1(h)

(h) This defendant objects to subpart (h) of Interrogatory No. 1 on the ground that the request to describe "the organizational structure" of this defendant is unduly vague and not subject to a reasonable interpretation and upon the further ground that said request is unduly burdensome upon this defendant. Subject to and without waiving this objection, this defendant states that various committees or administrative positions existed within the firm for part or all of the Time Period. As a preface to the description of these committees or positions, this defendant states that the primary duty of every lawyer at

King & Spalding, whether partner or associate, is the practice of law. The administrative positions described below constitute collateral administrative duties which are performed by various partners at various times, but these duties are at all times secondary to the practice of law. Further, all of these committees or administrative positions are ultimately accountable to the partnership as a whole, which retains the ultimate decision-making power on all substantial questions involving policies of operating the firm. See §§ 7, 14 of Partnership Agreement.

(1) (A) The Management Committee

(B) The duties and responsibilities of the Management Committee are defined in the Partnership Agreement. The Management Committee in its present form (originally called the Executive Committee) was formed by the partnership in 1974.

(C) King & Spalding objects to this subpart to the extent that it seeks the identification of members of the Management Committee of King & Spalding at any time other than May, 1978 or May, 1979, in that such information is not related to the subject matter of plaintiff's action and is not reasonably calculated to lead to the discovery of admissible evidence with regard to this action. Subject to and without waiving this objection, this defendant states that, as of May, 1978, the Management Committee of King & Spalding was comprised of the following individuals: Hughes Spalding, Jr., James M. Sibley, Byron Attridge, Robert L. Steed, and Harry C. Howard. As of May, 1979, the Management Committee was comprised of the following individuals: James M. Sibley, Byron Attridge, Robert L. Steed, Harry C. Howard, Robert W. Hurst.

(D) Minutes of the meetings of the Management Committee exist for the period from 1972 to the present.

(2) (A) Lawyer Administrative Partner

(1) (B) During the Time Period, the Lawyer Administrative Partner had overall responsibility for recruitment, employment, assignment, evaluation and supervision of all legal and paralegal personnel, with the mandate to insure that professional obligations are carried out on all client matters with quality, service and timely performance and with a view toward the harmony of working conditions for legal and paralegal personnel. The Lawyer Administrative Partner serves as the person to whom any lawyer in the firm may express any opinion or view which he wishes to communicate to the partnership. The Lawyer Administrative Partner also has such other duties as the Management Committee may define from time to time. (2) (B) These duties are outlined in a 1975 memorandum to all firm personnel from the Management Committee ("1975 Memorandum"). The duties outlined in the 1975 Memorandum have been modified and reassigned from time to time.

(C) James M. Sibley

(D) The Lawyer Administrative Partner maintains no such records with regard to this administrative position.

In addition to the two specific positions discussed above, this defendant has during the Time Period, as outlined in the 1975 Memorandum, also had Finance, Office, and Client Administrative Partners, as well as a Hiring

Committee, a Fee and Client Committee, a Secret Art Committee, an Associate Orientation Committee, an Associate Partner, a Paralegal Administrative Partner, and various other positions or committees at various times. The committees and administrative positions are appointed by the partnership or the Management Committee on an ad hoc basis and perform duties and responsibilities as assigned. This defendant objects to providing information in addition to that provided in the 1975 Memorandum for these committees or positions on the ground that said requests are overly broad and unduly burdensome.

For further answer, this defendant states that during the Time Period, it has been more or less divided for certain administrative purposes into the following departments: Corporate, Antitrust, Securities, Municipal Finance, Banking, Litigation, Real Estate and Tax. Matters are frequently handled by lawyers from more than one department, depending on the nature of the legal problem faced by the client. Moreover, lawyers initially assigned to one department frequently move to other departments. Plaintiff was, at all times during her employment with King & Spalding, assigned to the Real Estate Department. This defendant objects to identifying the Administrative Partners and attorneys assigned to various departments on the ground that said identification relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim.

Interrogatory 1(i)

(i) With respect to "Administrative Partner" positions of the defendant which existed at any time during the Time Period, state the following information:

(1) Identify the title of the position.

(2) (A) Identify all documents which set forth or define the duties and responsibilities of such position, and (B) if such duties and responsibilities are not fully set forth in written form, state the unwritten powers and duties of each such position.

(3) Identify each person holding such position during the Time Period.

(4) Identify by type or category and a general description of contents the records maintained by or under the supervision of the person in such position.

Response to Interrogatory 1(i)

(i) King & Spalding objects to subpart (i) of Interrogatory No. 1 to the extent that it seeks information with regard to the "Administrative Partner" positions other than what is described in the 1975 Memorandum and the responses to subpart (h) above on the grounds that such information is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. With regard to the Lawyer Administrative Partner, see the responses to subpart (h) above.

Interrogatory 1(j)

(j) Does the defendant maintain minutes or other documents reflecting the substance of (1) general meetings of defendant's partners, (2) general meetings of defendant's partners and associates, (3) meetings of committees of the defendant, and (4) meetings of departments of the law firm, and, if so, for what period of time have such minutes or other documents been maintained?

Response to Interrogatory 1(j)

(j) This defendant objects to subpart (j) of Interrogatory No. 1 for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant maintains minutes or records of the meetings of the following committees for the period of time shown:

Management Committee (1972—Present; provided, however, that prior to 1977, such minutes were prepared and maintained on a sporadic basis).

Partnership Meetings (1972—Present). This defendant also maintains for certain periods of time minutes of the meetings of its Hiring Committee, but objects to the identification or production of those minutes on the ground that they are not related to the subject matter of the pending action and are not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory 1(k)

(k) Please identify all documents which refer to or reflect the following information pertaining to (1) the defendant's policy and procedure for determining capital or other financial contributions required by the defendant in connection with the admission of a new partner to the firm, (2) the percentage of ownership of the assets of the defendant acquired by a new partner, (3) the percentage or amount of firm capital or assets which a partner is entitled to receive as a matter of right from the firm upon voluntarily withdrawal, expulsion, or death.

Response to Interrogatory 1(k)

(k) This defendant objects to subpart (k) of Interrogatory No. 1 for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein by reference. This defendant further objects to subpart (k) of Interrogatory No. 1 on the ground that the information sought therein is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence with regard to this action. Subject to and without waiving its objection, this defendant states that information of the nature sought in subpart (k) is included in the Partnership Agreement.

Interrogatory 1(l)

(l) Please (1) identify all documents which set forth the procedure, method, system or criteria used by the defendant or any committee thereof to determine the compensation of partners in defendant, and (2) if such procedure or method is not fully set forth in any documents, please state the procedure, method, system or criteria used by the defendant to determine the compensation of partners.

Response to Interrogatory 1(l)

(l) This defendant objects to subpart (l) of Interrogatory No. 1 on the grounds that the information requested therein is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence with regard to this action.

This defendant further objects to subpart (l) to the extent that it seeks information about procedures or cri-

teria used at any time other than the Time Period for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein. Subject to and without waiving this objection, this defendant states:

(1) None other than the Partnership Agreement.

(2) The procedures for determining the compensation of partners within this defendant vary from year to year, but generally involve obtaining an agreement of the partnership as a whole, as provided by §§ 7, 14 of the Partnership Agreement.

Interrogatory 1(m)

(m) (1) Did the defendant maintain professional malpractice insurance during the Time Period?

(2) If so, please state the monetary limits of such policies applicable to errors, omissions or professional malpractice by (A) partners of defendant, (B) associates of defendant.

Response to Interrogatory 1(m)

(m) King & Spalding objects to subpart (m) of Interrogatory No. 1 on the grounds that said Interrogatory relates to a defense asserted by this defendant to plaintiff's claim and therefore is not properly within the scope of discovery as authorized by the Court's Order of April 15, 1980. King & Spalding further objects to Interrogatory 1(m) on the grounds that said Interrogatory relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim. Subject to and without waiving this objection, this defendant states:

(1) Yes.

(2) This defendant objects to subpart (2) of part (m) of Interrogatory No. 1 on the grounds that the information requested therein is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence with regard to this action.

Interrogatory 1(n)

(n) (1) Did the defendant have any pension, profit sharing or retirement plan in effect during the Time Period that covered both partners and associates; if so (2) please identify each such plan and any amendments thereto.

Response to Interrogatory 1(n)

(n) (1) Yes, a retirement plan.

(2) This defendant objects to subpart (2) of part (n) of Interrogatory No. 1 on the grounds that the information requested therein is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence with regard thereto.

5.

Interrogatory 5

Please identify all documents which state, in whole or in part, the standards, criteria, procedures or policies utilized by defendant during the Time Period concerning the following subjects:

(a) Evaluation of Associate Performance, including but not restricted to (1) criteria for evaluation of associ-

ates, (2) coordination of evaluation by partners, (3) communication to partners and to associates individually the results of associate evaluations, (4) criteria for admission to partnership, and (5) decisions or recommendations of termination of associates.

(b) Criteria for advancement to partnership.

(c) Compensation policies for legal personnel.

(d) Establishment of number of lawyers to be hired or admited to partnership.

(e) Equal employment practice policies pertaining to legal personnel.

(f) Hiring, including but not limited to (1) criteria for job offer, (2) Recruiting Committee procedures, (b) policies regarding employment of lawyers.

Response to Interrogatory 5

King & Spalding objects to Interrogatory No. 5 on the grounds that said Interrogatory relates to a defense asserted by this defendant to plaintiff's claim and therefore is not is not properly within the scope of discovery as authorized by the Courts Order of April 15, 1980. King & Spalding further objects to Interrogatory No. 5 on the grounds that said Interrogatory relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim.

6.

Interrogatory 6

With reference to the Fifth Defense stated in the answer that "[p]laintiff's claims under Title VII are barred

because defendant is not a person engaged in an industry affecting commerce within the meaning of Title VII," please state the following information:

(a) Please state all facts on which defendant relies to support such contention.

(b) Please identify all documents on which defendant relies to support such contention.

(c) Please identify all persons who are known to defendant or to defendant's attorneys to have personal knowledge of such facts.

Response to Interrogatory 6

This defendant objects to Interrogatory No. 6 on the grounds that said Interrogatory seeks information regarding a defense to plaintiff's claim of employment discrimination and, therefore, is beyond the scope of discovery authorized by the Court in its ruling on April 15, 1980.

7.

Interrogatory 7

With reference to the allegations of paragraph 2(a) of the Eighth Defense of the answer that "defendant denies that it is a person engaged in an industry affecting commerce," please state the following information:

(a) Please state all facts on which defendant relies to support such contention.

(b) Please identify all documents on which defendant relies to support such contention.

(c) Please identify all persons who are known to defendant or to defendant's attorneys to have personal knowledge of such facts.

Response to Interrogatory 7

This defendant objects to Interrogatory No. 7 on the grounds that said Interrogatory seeks information regarding a defense to plaintiff's claim of employment discrimination and, therefore, is beyond the scope of discovery authorized by the Court in its ruling on April 15, 1980.

8.

Interrogatory 8(a)

(a) Does defendant contend that it is not engaged in interstate commerce?

Response to Interrogatory 8(a)

(a) This defendant contends that it is not engaged in interstate commerce within the meaning of Title VII, which refers to a "person engaged in an industry affecting commerce," in that this defendant is engaged in a profession, not an industry. This defendant states, however, that it derives a substantial portion of its total fees from clients who reside or have their principal place of business outside of the State of Georgia and will further stipulate that, in performing legal services for these clients and for its clients within the State of Georgia, lawyers who are members of or are employed by this defendant make numerous trips to points outside of Georgia. This defendant further states that these trips are made in association with, *inter alia,* rendering legal services in court or administrative proceedings located outside of Georgia, rendering legal services with reference to real estate transactions involving real property outside of the State of Georgia, rendering legal services in connection with the sale of securities by an issuer having its principal place

of business outside of the State of Georgia, and rendering other legal services to clients whose principal offices are located outside the State of Georgia.

Interrogatory 8(b)

(b) If so, please state the following information with respect to defendant's last complete fiscal year:

(1) The total fees received by the defendant for the rendition of legal services and the amount of fees billed by defendant's (A) Atlanta office and (B) defendant's Washington office.

(2) The total revenues of the defendant derived from legal services rendered to clients with respect to litigation pending in Georgia, real estate transactions involving real property located exclusively in Georgia, bond or other securities, offerings for offerors located exclusively in Georgia where all the purchasers located within Georgia.

(3) The total revenues derived by defendant from the following:

(A) The rendition of legal services with reference to any court or administrative proceedings located outside Georgia.

(B) The rendition of legal services with reference to any real estate transactions involving property outside the State of Georgia.

(C) The rendition of legal services in connection with any offering or sale of securities by an issuer having its principal place of business outside the State of Georgia, or which required

registration, or exemption under the laws of a state other than Georgia, or which was closed outside the State of Georgia.

(D) The rendition of any other legal services to clients whose principal offices were located outside the State of Georgia, and which involved the application of procedural or substantive law of a state other than Georgia.

(4) (A) The number of trips made by lawyers of defendant to points outside of Georgia in the course of rendering professional services for clients, (B) the number of days spent by lawyers of defendant outside the State of Georgia in the course of rendering professional services for clients, and (C) the cost of such trips to the defendant or its clients.

(5) (A) The number and (B) cost of long distance telephone charges incurred by defendant in the couse of rendering professional services for clients.

Response to Interrogatory 8(b)

(b) King & Spalding objects to subpart (b) of Interrogatory No. 8 on the grounds that, in light of the facts stated in its response to subpart (a) above, the specific information requested in subpart (b) is overly broad and unduly burdensome to this defendant.

10.

Interrogatory 10

With reference to the allegations of Paragraph 9 of the Eighth Defense that defendant had a "practice of not employing permanent associates," please state the following information:

(a) When and how was this policy adopted?

(b) Is this policy reflected by any documents, and, if so, please identify all such documents?

(c) (1) Has the defendant made any exceptions to the policy since its adoption? If so, (2) please describe each individual for whom an exception was made, (3) the reasons for the exception, and (4) identify all documents reflecting such reasons.

(d) (i) Under defendant's policy, does an associate have the alternative of remaining as an employee of the firm? If so, please state (2) the length of time that the associate is permitted to remain an employee of the firm, and (3) any changes or modifications in the compensation, terms and conditions of employment that would apply to an associate who has been denied partnership that would not be applied to other associates who have been refused admission to partnership.

Response to Interrogatory 10

King & Spalding objects to Interrogatory No. 10 on the grounds that said Interrogatory relates to a defense asserted by this defendant to plaintiff's claim and therefore is not properly within the scope of discovery as authorized by the Court's Order of April 15, 1980. King & Spalding further objects to Interrogatory No. 10 on the grounds that said Interrogatory relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim.

Interrogatory 12(a)

(a) Has the defendant given any consideration to the applicability of Title VII of the Civil Rights Act to

(1) defendant's practices, policies, procedures or decisions to employ, refrain from employing, discriminate in the employment of, or terminate the employment of lawyers as associates in defendant, and (2) defendant's decision to make, refrain from making, or delay making or "inviting" an associate to become a partner in defendant, other than in specific connection with the charge filed by plaintiff with the EEOC, and the pending suit filed by plaintiff?

Response to Interrogatory 12(a)

(a) This defendant objects to the term "consideration" and the phrase "given any consideration" as used in Interrogatory No. 12 on the grounds that said terms are unduly vague and not subject to reasonable interpretation within the context of a law firm partnership. This defendant further objects to Interrogatory 12(a) on the grounds that said Interrogatory relates to a defense asserted by this defendant to plaintiff's claim and therefore is not properly within the scope of discovery as authorized by the Court's Order of April 15, 1980. This defendant further objects to Interrogatory 12(a) on the grounds that said Interrogatory relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objects to plaintiff's claim. This defendant further objects to Interrogatory 12(a) for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein. Subject to and without waiving its objections, this defendant states as follows:

(1) Yes.

(2) No.

Interrogatory 12(b)

(b) If the answer to subparagraph (a) is "yes," identify all documents which refer to, reflect or evidence defendant's consideration of any of the subjects described in subparagraph (a).

Response to Interrogatory 12(b)

(b) See this defendant's objection to subpart (a) above, which objection is incorporated herein by reference. Subject to and without waiving its objection, this defendant states that it knows of no such documents.

13.

Interrogatory 13

(a) Has defendant employed any outside consultant to make any evaluation or recommendation with respect to the organizational structure of the defendant?

(b) If so, please identify such consultant and identify any report or recommendations made by such consultant.

Response to Interrogatory 13

(a) No.

(b) Not applicable.

14.

Interrogatory 14

Please identify the partners or employees of defendant who are primarily responsible for (a) collecting the

information contained in the answers to these interrogatories, and (b) locating the documents identification of which is requested in these interrogatories.

Response to Interrogatory 14

(a) Byron Attridge.

(b) Byron Attridge.

SIGNED AS TO OBJECTIONS ONLY

LOKEY & BOWDEN

/s/ Hamilton Lokey
/s/ Gerald F. Handley

Attorneys for Defendant
KING & SPALDING

VERIFICATION

STATE OF GEORGIA
COUNTY OF FULTON

BYRON ATTRIDGE, being duly sworn on oath, deposes and says as follows:

"I am BYRON ATTRIDGE, a partner of defendant, King & Spalding, and in that capacity have read the foregoing Answers to Interrogatories of King & Spalding. The information in said Answers has been obtained by me from investigations conducted by myself and by counsel for King & Spalding. On the basis of those investigations, and to the best of my present information and belief, the matters set forth in said Answers are true."

/s/ Byron Attridge

REPLY MEMORANDUM BY EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN SUPPORT OF MOTION TO PARTICIPATE AS *AMICUS CURIAE*.

King and Spalding, in its opposition to the Commission's motion to participate as *amicus curiae*, makes a number of erroneous factual assumptions which the Commission wishes to dispel.

1. King and Spalding's contention that the Commission's inability to investigate and conciliate Ms. Hishon's charge fully should now preclude Commission participation as *amicus curiae* misconstrues the nature of the Commission's actions.

The EEOC's Atlanta district office issued its early notice of right to sue at Ms. Hishon's request pursuant to a judicially sanctioned Commission regulation.[1] That regulation authorizes district directors to issue notices of right to sue upon request if it appears that, because of the backlog of charges in the district office, the office will be unable to complete processing the charge within 180 days. Inasmuch as Ms. Hishon had an absolute right to demand a right to sue notice on the 180th day, the purpose of the regulation is solely to avoid needless delay

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[1]The regulation, 29 C. F. R. 1601.28(a)(2) (1978), has been upheld by the only appellate decision on point, *Bryant v. California Brewers Ass'n*, 585 F. 2d 421 (9th Cir. 1978), *vacated and remanded on other grounds*, — U. S. —, — S. Ct. —, 63 L. Ed. 2d 55 (1980), in accordance with prevailing decisional law. *See, e. g., Milner v. National School of Health Technology*, 409 F. Supp. 1389 (E. D. Pa. 1976); *Westerlund v. Fireman's Fund Ins. Co.*, — F. Supp. —, 11 FEP Cases 744, 745, 10 EPD ¶10,456, at 5974 (N. D. Cal. 1975).

when it appears that Commission processing would not be finished by the time Ms. Hishon could have exercised her statutory prerogative no matter what the Commission was doing.

Furthermore, King & Spalding's suggestion that the EEOC's inability to process expeditiously Ms. Hishon's charge makes Commission *amicus curiae* participation inappropriate is illogical. Administrative processing of a charge is a time-consuming fact-finding process, requiring the interviewing of witnesses and examination of numerous documents, to determine whether charging parties in facts suffered discrimination. In contrast, our proposed participation involves legal analysis of facts gathered by others to determine whether Title VII applies to the law firm's partnership decisions. These are wholly distinguishable Commission functions which serve entirely different purposes. In addition, district office backlogs have no bearing on the General Counsel's ability to make the Commission's view of the law known to courts in individual cases. The Commission has a duty to investigate all charges unless a right-to-sue notice is issued at the aggrieved person's request. As a matter of fairness, it processes charges in the order in which they are received. By contrast, the General Counsel can pick and choose among cases presenting important legal issues, irrespective of the order in which litigation was brought.

2. King and Spalding's contention that the Commission seeks to enter this action "as a partisan on behalf of the plaintiff" misidentifies the purpose of *amicus curiae* participation. The EEOC has a statutory duty to enforce Title VII and to insure that its coverage includes all whom Congress intended to protect. We are

seeking to fulfill that responsibility here. The mere fact that, in arguing for Title VII coverage for "junior" partners, the Commission also assists Ms. Hishon in withstanding a motion to dismiss scarcely makes EEOC participation "partisan".

3. King and Spalding's allegation that the Commission does not need access to discovery materials for the purpose of arguing that the firm's actions are covered by Title VII is erroneous. The only reported decision on this issue, *Lucido v. Cravath, Swaine & Moore,* 425 F. Supp. 123 (S. D. N. Y. 1979), resolved the question on the basis of facts adduced through discovery. The court cited plaintiff's reliance on the firm's stated policy—which consisted of fairly considering associates for partner, hiring partners exclusively from within the firm, and discharging associates passed over for partner—to find the opportunity for promotion one of the "terms, conditions, or privileges of employment" or an "employment opportunity" as to which Title VII prohibits discrimination, 42 U. S. C. 2000e - (2) (a) (1), (a) (2). *Id.* at 128. Hence, in order to argue this and other possible theories of liability, the Commission must have access to information regarding King and Spalding's structure and operations.

4. King and Spalding's concerns that the court's protective order may be breached should the Commission have access to discovery are unfounded. Until such time as the protective order is modified or vacated, only four Commission attorneys[2] and one or two secretaries will see

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[2]Leroy D. Clark, General Counsel; Joseph T. Eddins, Associate General Counsel; Lutz Alexander Prager, Susan Buckingham Reilly, Attorneys, Appellate Division.

our brief in this case; only two of the attorneys[3] will review discovery materials in order to prepare the brief. All four attorneys and support staff are located in Commission Headquarters within the Office of General Counsel.

For these reasons, the Commission submits that its motion for leave to participate as *amicus curiae* should be granted.

LEROY D. CLARK
General Counsel

JOSEPH T. EDDINS
Associate General Counsel

LUTZ ALEXANDER PRAGER
/s/ SUSAN B. REILLY
Attorneys

June 4, 1980

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

2401 E Street, N. W.
Washington, D. C. 20506
(202) 634-6150

MOTION TO COMPEL KING & SPALDING TO PRODUCE DOCUMENTS AND TO ANSWER INTERROGATORIES

Plaintiff respectfully moves the Court, pursuant to Rule 37(a) (2) of the Federal Rules of Civil Procedure and in conformity with Rule 91.61 of the Local Rules of this Court, for an order compelling defendant King &

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[3]Mr. Prager and Ms. Reilly.

Spalding to respond to the following of plaintiff's discovery requests which were served on April 10, 1980:

(1) Produce complete and unabridged copies of its written partnership agreements in effect during the period January 1, 1972 through the current date (see, for example, the censored version of Memorandum of Agreement executed January 1, 1974, attached to this motion);

(2) Produce documents called for by Plaintiff's First Notice to Produce to King & Spalding served April 10, 1980; and

(3) Answer Interrogatories numbered 1 (c), (1 (d) (l), 1 (f), 1 (h), 1 (i), 1 (j), 1 (k), 1 (l) and 1 (m), 5, 6, 7, 8 and 10 of Plaintiff's First Interrogatories to King & Spalding also served April 10, 1980.

The plaintiff's discovery requests, the defendant's objections thereto, and the grounds for compelling further answers are set forth below as required by Local Rule 91.61 in the brief filed in support of this motion in the brief filed in support of this motion.

WHEREFORE, plaintiff respectfully prays that her motion be granted and that defendant King & Spalding be ordered to file more responsive answers to plaintiff's First Interrogatories, and to produce documents requested by plaintiff's First Notice to Produce.

/s/ Emmet J. Bondurant
/s/ Jeffrey M. Smith

Attorneys for Plaintiff

Of Counsel:

TROTTER, BONDURANT, MILLER & HISHON

2200 First National Bank Tower
Atlanta, Georgia 30383
(404) 688-0350

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 21 day of June, 1980.
Emmet J. Bondurant, Attorney for Plaintiff.

ATTACHMENT

MEMORANDUM OF AGREEMENT
KING & SPALDING

The undersigned partners in the above-named firm hereby agree as follows:

1.

The firm name shall be:

"KING & SPALDING".

2.

This firm began business January 1, 1885 under the firm name of King & Spalding, and continued through the years as Calhoun, King & Spalding; King, Spalding & Little; King, Spalding & Underwood; King, Spalding, MacDougald & Sibley; Spalding, MacDougald & Sibley; Spalding, Sibley, Troutman & Brock; Spalding, Sibley & Troutman; Spalding, Sibley, Troutman & Kelly; Spalding, Sibley, Troutman, Meadow & Smith; and currently the present firm name.

3.

This firm shall engage in the general practice of law. Each partner, except William K. Meadow and any other partner whose participation shall have been reduced under paragraph 11 hereof, shall devote his full time and attention to the business of the firm. Any partner whose participation shall have been reduced under paragraph 11 hereof shall devote such time and attention to the business of the firm as is commensurate with such reduced participation.

4.

Each partner shall contribute to the capital that amount of money which is the result of multiplying by the amount of participating units set opposite the name of such partner in paragraph 6 hereof.

5.

a) The firm shall continue until dissolved by vote of partners with at least 66-⅔% of the participating units set forth in paragraph 6 hereof. The firm shall not be dissolved by the withdrawal, incapacity or death of any partner or partners, except as provided in subparagraph (c) hereof.

(b) Any partner may voluntarily withdraw from the firm at any time by written notice to one of the Managing Partners. Any partner shall withdraw from the firm if partners with at least 66-⅔% of the participating units shall in writing so request, and no cause for such request need exist or be shown.

(c) Upon the voluntary withdrawal of any partner or partners, or upon withdrawal of any partner or partners upon request pursuant to subparagraph (b) hereof, the remaining partners may elect to dissolve the firm. If

such election is made, written notice thereof signed by partners with at least 66-⅔% of the remaining participating units shall be delivered to the withdrawing partner or partners, and to any other partners who have not signed with notice, within 30 days after the effective date of such withdrawal. Such dissolution, if so elected, shall be deemed to have occurred on the effective date of such withdrawal.

6.

(a) Each partner's participation in the net profits and losses of the firm shall be determined by multiplying such profits and losses by a fraction, the numerator of which is the number of participating units set opposite the name of such partner below and the denominator of which is the sum of all participating units. The name of each partner and his participating units are:

Name of Partner	*Participating Units*
William K. Meadow	
Charles L. Gowen	
Hughes Spalding, Jr.	
James M. Sibley	
Charles H. Kirbo	
John Izard	
Pope B. McIntire	
Kirk M. McAlpin	
Kenneth L. Hewitt	
Richard A. Denny, Jr.	
Harry C. Howard	
William H. Izlar, Jr.	
R. Byron Attridge	
Bradley Hale	
Robert W. Hurst	
Robert L. Steed	
Henry Hall Ware, III	
Daniel J. O'Connor, Jr.	

Hugh Peterson, Jr.
John A. Wallace
Edward J. Hawie
John C. Staton, Jr.
David L. Coker
John D. Hopkins
A. Felton Jenkins, Jr.
G. Lemuel Hewes
Jack H. Watson, Jr.
Horace H. Sibley
Charles M. Shaffer, Jr.
Joseph R. Gladden, Jr.
W. Donald Knight, Jr.

Total

(b) When any partner has been separated from the firm by voluntary or involuntary withdrawal, death or incapacity, then such partner's participating units shall be eliminated from the calculations set forth in this paragraph.

7.

All substantial questions involving policies of operating the firm (*e. g.*, change in its name, participating units, etc.) shall be decided by the vote of partners with 60% or more of the participating units.

8.

(a) The partnership incurred indebtedness in the aggregate principal amount of during 1971 to pay for the cost of the leasehold improvements and the furniture and fixtures for its new offices. Such indebtedness is repayable in 37 approximately equal quarterly installments of principal and interest which commenced on April 1, 1971 and which extend through April 1, 1980. In order to provide a fund from which payments of prin-

cipal and interest on such loan can be made, there has been charged against the income of the firm since 1970 and there shall continue to be charged against the income of the firm, an amount equal to the sum of (i) the cost of such leasehold improvements amortized on a straight-line basis over ten years (which is the term of the firm's lease of such new offices), plus (ii) the cost of such furniture and fixtures depreciated on an accelerated basis over ten years, and (iii) the interest due currently on such indebtedness (hereinafter collectively called the "Deducted Amounts"). Cash equal to the Deducted Amounts shall be placed in a Reserve for Debt Service, and each partner shall have an interest in such Reserve equal to the portion of the Deducted Amounts that is charged against his interest in the partnership from time to time. The required payments of principal and interest on such indebtedness shall be the obligation of each partner to the extent of his interest in the profits of the partnership at the time of such payment, and shall be charged against and paid from his interest in the Reserve for Debt Service, to the extent thereof, and otherwise shall be paid from his share of the current profits of the firm. It is anticipated that for several years the Deducted Amounts will exceed the required payments of principal and interest on the indebtedness. Such excess shall be held in the Reserve for Debt Service and shall be invested by the Management Committee. All income earned from such investments in such Reserve shall be credited to the accounts of the partners in proportion to their respective interests therein at the end of each calendar year. Cash equal to the income earned from such investments during each calendar year shall at the end of each calendar year be transferred from the Reserve for Debt

Service to the general firm account. Upon payment in full of such indebtedness, any amount remaining in the Reserve for Debt Service shall be distributed among the partners according to their respective interests therein.

(b) Since the Reserve for Debt Service will result merely from the fact that deductions for depreciation, amortization and interest will not coincide with repayments of the indebtedness, upon separation from the firm of any partner by reason of voluntary or involuntary withdrawal, or death, the interest of such partner in the Reserve for Debt Service shall revert to the firm, to be held by it and applied against payments on such indebtedness as they become due. Neither such partner nor his personal representative shall have any interest therein or claim therefor, except that the amount of such interest shall be a credit against and reduction of the continuing liability of such partner for such inidebtedness, if any.

(c) William K. Meadow shall not have any liability for any part of the indebtedness incurred by the firm for the cost of its new offices following his separation from the firm by reason of voluntary or involuntary withdrawal, or death, or following dissolution of the firm, and the note and any loan agreement representing or with respect to such indebtedness shall expressly so state.

9.

(a) For some time it has been the practice to permit new partners to share immediately in all receipts of fees thereafter collected, even though they may have been earned in whole or in part at the time the new partner was admitted, and distributions to the partners, new and old alike, have been made upon a cash receipts basis with

no distinction between fees already collected and fees earned in whole or in part and uncollected prior to the admission of the new partner. In view of this practice by which the undersigned partners have benefited, it is agreed that upon the separation from the firm of any partner, whether by reason of voluntary or involuntary withdrawal or death, his interest in the firm's earnings and assets shall be as follows:

(i) A refund of his cash capital contribution, if the firm's capital is unimpaired (to the extent there is impairment of the firm's capital, such partner shall be refunded only his proportion of unimpaired capital);

(ii) The amount of undistributed net earnings to which he is entitled as shown by the firm's records as of the end of the month in which such withdrawal occurs.

Such amounts shall be paid as promptly as practical after such withdrawal.

(b) In addition, if such withdrawal is by reason of the death of a partner, a portion of the firm's future profits, in an amount equal to the percentage that such deceased partner's units of participation at date of death are of all units on such date, multiplied by the net income of the firm for the calendar year preceding the date of such partner's death, shall be paid in five equal annual installments, without interest, beginning on the first business day of the calendar year following the date of such partner's death.

(c) Amounts payable under subparagraph (a) hereof shall be paid to the withdrawn partner if living, or if

deceased to his widow, if any, or if none to his estate. Amounts payable under subparagraph (b) hereof shall be paid to the deceased partner's widow, if any, or if none to his estate. For federal income tax purposes, the widow, if any, or if none, his estate, shall be his successor in interest.

(d) Should any partner or partners be separated from the partnership by involuntary withdrawal or death, the partnership not being otherwise dissolved, such partner or partners' responsibility for the liabilities of the partnership, as between him or them, the partnership and the remaining partners, will terminate immediately and be assumed by the partners from time to time in the continuing partnership.

10.

Should any partner at any time become disabled, either wholly or partly, to continue in the full-time practice of law, an adjustment may be made in his participation units in future firm income to the extent determined by the other partners.

11.

(a) The following shall serve as an expression of intention of the partners of the firm as to the policy of reductions in participation by the partners upon reaching certain ages, except that it is not intended that such expression shall apply to William K. Meadow and Charles L. Gowen.

(b) Beginning with the first day of the month following the date of the partner's 67th birthday, his units shall be reduced to 75% of the units to which he was entitled on such birthday; beginning with the first day of

the month following such partner's 70th birthday, his units shall be reduced to 50% of the units to which he was entitled on his 67th birthday; beginning with the first day of the month following such partner's 73rd birthday, his units shall be reduced to 33-⅓% of the units to which he was entitled on his 67th birthday; and beginning with the first day of the month following such partners 77th birthday, his units shall be reduced to 25% of the units to which he was entitled on his 67th birthday.

(c) The provisions of such subparagraph (b) hereof to the contrary notwithstanding, should the total units of all partners whose participation has been so reduced following their 73rd birthday exceed 15% of the total units of all partners of the firm, such units of such partners who have reached their 73rd birthday shall be reduced proportionately so as to reduce the total of such units to 15% of the total units of all partners of the firm.

12.

Accurate and complete books of account shall be kept at all times at the expense of the firm. Each partner shall at all times have access thereto.

13.

It has been and is the agreement among the partners that each partner will provide and maintain an automobile needed for use in the partnership business in connection with those clients and matters for which the partner is responsible, and will pay such expenses as may be necessary for entertaining clients and prospective clients and otherwise maintaining and increasing partnership business, and that such expenses will not be reimbursed

by the firm. Such expenses are, however, required to be incurred by the partners and such expenses and the results obtained therefrom are taken into account in fixing the respective percentages of the participation of the partners in the net income of the partnership and are covered thereby.

14.

The management of the firm shall be delegated to a Management Committee comprised of three partners (the "Managing Partners"), namely, Charles L. Gowen, Hughes Spalding, Jr. and James M. Sibley. The Managing Partners shall select from among themselves one who shall be the Secretary of the Management Committee. The Secretary shall be primarily responsible for the proper functioning of the Management Committee. The Management Committee shall function for a period of one year terminating on December 31, 1974, and, after said date shall stand dissolved, unless continued in existence by the affirmative vote of partners with 66-⅔% or more of the participating units. To the Management Committee the partners delegate full and complete authority and responsibility to make any and all decisions, commitments and contracts with respect to the operation and management of the firm, provided, however, the Management Committee shall not have authority to act in a manner which would require a change in this Partnership Agreement for its accomplishment or implementation. The Management Committee shall have full authority to create from time to time such other committees as it might deem necessary or desirable in the proper conduct of the firm's business and to abolish any such committee so created. The Management Committee is authorized to delegate to any other committee which it might create such power

and authority as said Committee shall deem to be proper in the circumstances; provided, however, said Committee shall continue to stand responsible to the firm for any and all action taken by any committee which it shall create. No action taken by the Management Committee may be reversed or changed except by an affirmative vote of partners with 66-⅔% or more of the participating units.

15.

This Partnership Agreement may be amended from time to time by the vote of partners with 66-⅔% or more of the participating units.

16.

This agreement is effective as to all partners as of the first day of January, 1974.

Executed as this 1st day of January, 1974.

/s/ William K. Meadow
/s/ Hughes Spalding, Jr.
/s/ Charles H. Kirbo
/s/ Charles L. Gowen
/s/ James M. Sibley
/s/ John Izard
/s/ Pope B. McIntire
/s/ Kenneth L. Hewitt
/s/ Harry C. Howard
/s/ R. Byron Attridge
/s/ Robert W. Hurst
/s/ Henry Hall Ware, III
/s/ Hugh Peterson, Jr.
/s/ Edward J. Hawie
/s/ David L. Coker
/s/ A. Felton Jenkins, Jr.
/s/ Jack H. Watson, Jr.
/s/ Charles M. Shaffer, Jr.

/s/ Kirk M. McAlpin
/s/ Richard A. Denny, Jr.
/s/ William H. Izlar, Jr.
/s/ Bradley Hale
/s/ Robert L. Steed
/s/ Daniel J. O'Connor, Jr.
/s/ John A. Wallace
/s/ John C. Staton, Jr.
/s/ John D. Hopkins
/s/ G. Lemuel Hewes
/s/ Horace H. Sibley
/s/ Joseph R. Gladden, Jr.

/s/ W. Donald Knight, Jr.

BRIEF IN SUPPORT OF MOTION TO COMPEL KING & SPALDING TO ANSWER INTERROGATORIES AND TO PRODUCE DOCUMENTS

Introduction

This is a sex discrimination suit brought by the plaintiff, a woman lawyer formerly employed by King & Spalding as an associate, alleging that defendant King & Spalding unlawfully discriminated against her on the basis of sex when the Firm refused to promote her to partnership after seven years of employment as an associate, and then involuntarily terminated her employment as an associate of the Firm under the Firm's established "up or out policy."[1]

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[1]The existence of an "up or out policy" is admitted by King & Spalding in its Answer, in which the Firm alleges that it had a "practice of not employing permanent associates and knew that associates who had been advised that they would not be invited to become a partner should seek employment elsewhere." Answer ¶ 9 (p. 5). King & Spalding also emphasizes its "up or out policy" at least three times in its brief in support of its motion to dismiss the complaint:

> "After this decision was made, Mr. Denny was requested to advise plaintiff that consistent with the custom and practice of King & Spalding she was welcome to remain with the firm, *but only until she had had a reasonable time* to pursue other career opportunities." Brief p. 4.
>
> "King & Spalding does not employ permanent associates, and associates who are not admitted to partnership are expected, after a reasonable period of time, to find other employment." Brief p. 5.
>
> "Under the established policies of Defendant, there are no permanent associates. If an attorney is not admitted to the partnership, that attorney is expected, within a reasonable period of time, to find other employment." Brief p. 12.

See also Affidavit of James M. Sibley dated March 28, 1980, ¶ 10.

King & Spalding has moved to dismiss the complaint on the ground that, even if King & Spalding discriminated against plaintiff on the basis of her sex as alleged in the complaint, the Firm's decisions as to which of its many associates the Firm would retain by promoting them to partnership, and which it would force to leave as a consequence of the Firm's "up or out policy," do not involve a "term, condition or privilege of employment" that is covered by Title VII. § 703(a), 42 U. S. C. § 2000e-2(a).

The issue presented by this case is of major significance. A ruling in King & Spalding's favor on the "coverage" issue would be tantamount to an endorsement by the Court of the *right* of large institutional law firms to discriminate in the admission of lawyers to partnership on the basis of race, sex, or religion, without restraint or fear of legal redress. Such a ruling would permit, if not encourage, large law firms to adopt express written overt policies that say "No Blacks, Jews or Women Admitted to Partnership."

Such a ruling would be a major set-back for women and other minorities that, having won the right to attend law schools, and equal employment as untenured "associates," by law firms having 15 or more employees [*see Kohn v. Royall, Koegel & Wells,* 496 F. 2d 1094 (2d Cir. 1974); *Blank v. Sullivan & Cromwell,* 418 F. Supp. 1 (S. D. N. Y. 1975); *Rinella v. Rinella,* 401 F. Supp. 175 (N. D. Ill. 1975)], would find themselves confined to subservient or low-level positions in law firms, and denied an equal opportunity with their white male counterparts to advance to the more highly compensated and more prestigious partnership positions in the major law firms of the United States.

Such a ruling would run counter to the decisions of the Supreme Court and the Fifth Circuit that have emphasized that Title VII represents a national commitment to the elimination of discrimination from the economic life of the Country and is to be given the broadest possible interpretation and application given its important remedial purposes. *Franks v. Bowman Transportation Co., Inc.*, 424 U. S. 747, 763 (1976); *Rogers v. EEOC*, 454 F. 2d 234, 238 (5th Cir. 1971), *cert. denied*, 406 U. S. 957 (1972). A ruling exempting King & Spalding and other large institutional law firms from the coverage of Title VII would be inconsistent with rulings of the Supreme Court which have held that the coverage of national legislation regulating conditions of employment is to be interpreted liberally based on "economic fact," and is not to be narrowed by the application of artificial common law definitions of the term "employee." *NLRB v. Hearst Publications, Inc.*, 322 U. S. 111, 127 (1944).

In its Order of April 23, 1980, the Court recognized that an issue of this magnitude should not be decided on the bare-bones allegations of the complaint. Accordingly the Court granted the parties an opportunity to develop a complete record of evidence relevant to the Court's determination of the threshhold coverage issue during a 90-day discovery period.

Plaintiff served interrogatories and a document request on King & Spalding on April 10, 1980. The scope of these discovery requests was substantially narrowed by letter dated April 16, 1980 to conform the limitations on discovery approved by the Court orally at a conference in chambers on April 15 and confirmed by the Court's April 23, 1980 Order. After obtaining a two-week exten-

sion on May 27, 1980, King & Spalding filed responses to plaintiff's discovery requests. In its responses, King & Spalding effectively "stonewalled" plaintiff's discovery requests by objecting to most of plaintiff's interrogatories, and by a blanket refusal to produce *any* documents with the exception of abridged copies of the Firm's partnership agreements which Your Honor had stated, during the conference in chambers on April 15, would "of course" would have to be produced.

Summary of The Contentions

Plaintiff believes that a summary of the legal theories that will be advanced to support the contentions of the parties on the coverage issue would be helpful to the Court in assessing the relevancy of plaintiff's discovery requests.

The question presented here is whether the opportunity of an associate to be promoted to partnership in a large established institutional law firm such as King & Spalding is a "term, condition or privilege of employment" within the coverage of § 703(a) of Title VII, and protected from unlawful acts of discrimination. This question has been directly decided in only one case, *Lucido v. Cravath, Swain & Moore*, 425 F. 2d 123 (S. D. N. Y. 1977). *See also* Note: *Applicability of Federal Antidiscrimination Legislation to the Selection of A Partner*, 76 Mich. L. Rev. 282 (Dec. 1977). In that case, the Court denied a motion to dismiss a Title VII action brought by a former male associate of a large Wall Street law firm, Cravath, Swain & Moore, who alleged that he had been denied admission to partnership because he was an Italian-Catholic Although there have been several other Title VII cases against law firms, all of those cases have involved allegations of sex discrimination in the initial employment of associates.

Kohn v. Royall, Koegel & Wells, 496 F. 2d 1094 (2d Cir. 1974); *Blank v. Sullivan & Cromwell*, 418 F. Supp. 1 (S. D. N. Y.) 1975); *Rinella v. Rinella*, 401 F. Supp. 175 (N. D. Ill. 1975).

King & Spalding has moved to dismiss plaintiff's Title VII claims on the ground that a law firm's partnership decisions are not covered by the Civil Rights Act. Defendant contends that the opportunity of a lawyer to be promoted or advanced from the status of an "associate" to the status of a "partner" in a law firm is an "ownership" opportunity and not an "employment" opportunity covered by Title VII—that a King & Spalding partner is not an "employee" of the Firm—but a "joint employer" along with the Firm's 50+ other partners. King & Spalding's position is supported by only one case, *Burke v. Friedman*, 556 F. 2d 867 (7th Cir. 1977), which held that a small accounting firm with only four partners was not covered by Title VII when it refused to admit a fifth partner.

Without limiting the arguments that plaintiff will ultimately advance in opposition to King & Spalding's motion to dismiss plaintiff's Title VII claims, plaintiff will advance at least three basic legal theories in support of her position that Title VII applies to King & Spalding's discrimination against plaintiff on account of her sex. All of the discovery objected to by King & Spalding is directly relevant to one or more of these theories.

1.

For Title VII purposes, a large institutional law firm is to be treated in the same manner as other business entities are treated insofar as its obligations to promote qualified women to "management" positions are concerned.

It is plaintiff's basic contention that common law distinctions are not controlling Under Title VII and that a large institutional law firm has more attributes in common with large business corporations than it does with a small two-person common law partnership. King & Spalding should, therefore, be treated as an entity separate from its individual partners who should be treated as "employees" of the "Firm" for purposes of Title VII. Such an approach would conform to economic reality, and would treat large institutional law firms that are nominally organized as "partnerships" rather than "professional corporations" in the same manner as corporations and other large business entities are treated for purposes of Title VII.

The crux of King & Spalding's position is that the "Firm" and its partners are a single entity that cannot be separate for purposes of Title VII. There is, however, ample precedent for the proposition that a partnership will be treated as an entity that is separate and apart from its individual partners. For example, in *Bellis v. United States*, 417 U. S. 85, 93-94 (1974), the Supreme Court held a three-man law firm "partnership is properly regarded as an independent entity with a relative formal organization" [417 U. S. at 96 (n. 4)] that has "an established institutional identity independent of its individual partners" [417 U. S. at 96]; accordingly, the Court held that, even after the small law partnership had been dissolved, a former partner of the firm in the possession of partnership records had no individual right to invoke the privilege of self-incrimination in response to a subpoena to prevent production of records in his possession pertaining to the former partnership.

In language far more apropos of King & Spalding or any of the dozens of large, influential law firms throughout the country, than of the dissolved three-man partnership of Bellis, Kolsby & Wolf, the Court said:

> "Some of the most powerful private institutions in the Nation are conducted in partnership form. *Wall Street law firms* and stock brokerage firms provide significant examples. These are often *large, impersonal, highly structured enterprises* of essentially *perpetual duration.*"
>
> 417 U. S. at 93-94 (emphasis added).

King & Spalding meets all of these criteria.

In support of its ruling that a three-man law partnership is an independent entity, distinct from its partners, the Supreme Court emphasized many of the factors on which plaintiff relies as demonstrating that King & Spalding also has an "institutional identity independent of its individual partners" and, therefore, can be considered as the "employer" of its partners in the same way that a corporation is considered as the employer of its senior and junior executives. The Court explained that:

> "While small, the partnership here did have an *established institutional identity independent of its individual partners.* This was not an informal association or a temporary arrangement. . . . Rather, the partnership represented a formal institutional arrangement organized for the continuing conduct of the firm's legal practice. *The partnership was in existence for nearly 15 years* prior to its voluntary dissolution. Although it may not have had a formal constitution or bylaws to govern its internal affairs, state partnership law imposed on the firm a certain *organizational structure* in the absence of any contrary agreement by the partners; for example, it

guaranteed to each of the partners the equal right to participate in the management and control of the firm, Pa. Stat. Ann., Tit. 59, § 51 (e) (1964), and prescribed that majority rule governed the conduct of the firm's business, § 51 (h). *The firm* maintained a bank account in the partnership name, had stationery using the firm name on its letterhead, and, in general, *held itself out to third parties as an entity with an independent institutional identity.* It employed six persons in addition to its partners, including two other attorneys who practiced law on behalf of the firm, rather than as individuals on their own behalf. It *filed separate partnership returns for federal tax purposes,* as required by § 6031 of the Internal Revenue Code, 26 U. S. C. § 6031. *State law permitted the firm to be sued, . . . in the partnership name,* and generally regarded the partnership as a distinct entity for numerous other purposes."[2]

417 U. S. at 95-97 (emphasis added).

Unlike King & Spalding, the law firm in *Bellis* did not have a formal partnership agreement to serve as "a formal constitution or bylaws to govern its internal affairs." The Supreme Court emphasized in footnote (4) that "the *existence of a partnership agreement* [*such as King & Spalding has*] *would merely reinforce our conclusion that the partnership is properly regarded as an independent entity with a formal organization.*" 417 U. S. AT 96 (n. 4) (emphasis added).

The effect of the ruling in *Bellis* is to make clear that the form of the organization (partnership v. corporation) does not control over the substance in determining the scope or coverage of an important federal

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[2]Georgia law likewise recognizes the right of partnerships and other unincorporated associations to sue and be sued as an entity in partnership name. Ga. Code Ann. § 3-118.

mandate such as the Fifth Amendment in *Bellis,* or Title VII in this case, both of which require national standards of uniform application.

King & Spalding also argues that because partners are also considered to be the "owners" of the Firm, they cannot also be considered to be "employees" of the Firm for purposes of Title VII. Cases decided by the Supreme Court [*Goldberg v. Whitaker House Corp., Inc.,* 306 U. S. 28 (1961)], and by the Fifth Circuit [*Pettway v. American Cast Iron Pipe Co.,* 494 F. 2d 211, 264-66 (5th Cir. 1974), *rehearing denied,* 494 F. 2d 1296] establish, however, that owners of businesses may also be considered as "employees" who are protected by federal employment legislation. For example, in *Goldberg v. Whitaker House Corp., Inc., supra,* the Supreme Court held the women who worked at home knitting goods for sale by the cooperative were "employees" of the cooperative for purposes of the Fair Labor Standards Act, notwithstanding the fact that they were also "members" and "owners" of the cooperative. The Court concluded that "[t]here is no reason in logic why these members may not be employees. There is *nothing inherently inconsistent between the coexistence of a proprietary and an employment relationship.*" 366 U. S. at 28 (emphasis added).

In *Pettway v. American Cast Iron Pipe Co., supra,* the Fifth Circuit held that Title VII applies to and protects an opportunity to acquire an "ownership" position in a business on a fair and equal basis. In that case, all of the stock of American Cast Iron Pipe Co. had been conveyed under the will of the company's founder, John Egan, jointly to the members of two committees as trustees for the employees of the company. One committee

was called the Board of Management and consisted of corporate officers of the company. The second committee was called the Board of Operatives and consisted of white male employees of the company over 21 years of age elected by non-supervisory employees of the company. The district court held that, although black employees of the company were not "employees" of the Board of Operatives, the opportunity to be elected to serve on the Board of Operatives and to influence the management of the company by voting the shares of stock held by the Board was so connected with their employment that black employees could not be excluded from becoming trustee-owners of the stock as members of the Board of Operatives. *Pettway v. American Cast Iron Pipe Co.*, 333 F. Supp. 811, 815 (N. D. Ala. 1970). Judge Lynne held that:

> "[T]he right to serve as a member of the Board of Operatives at Acipco, has been, since the inception of the Egan Plan, a valuable term, condition or privilege of employment at Acipco and therefore falls within the express coverage of Title VII, 42 U. S. C. § 2000e-Z(a)."

On appeal, this portion of the district court's opinion was quoted with approval by the Fifth Circuit, which affirmed the ruling of the district court insofar as it held that black employees could not be denied election to the Board of Operatives. *Pettway v. American Cast Iron Pipe Co.*, 494 F. 2d 211, at pp. 263-264 (5th Cir. 1974), *rehearing denied*, 494 F. 2d 1296.

Thus, *Pettway* stands squarely for the proposition that where the opportunity to become an "owner" or "shareholder" and participate in the management of the enterprise is offered to some employees of the firm, it

is a "term, condition or privilege of employment" which cannot be discriminatorily withheld on the basis of race or sex.

Although King & Spalding has produced only *censored*[3] copies of its partnership agreements, those agreements reflect a conscious decision by King & Spalding to remove itself from the common law principles of partnership and create for King & Spalding a separate and continuing existence that closely resembles the organizational structure of ordinary business corporations:

1. *King & Spalding has a "charter."* While many law firms (including Kilpatrick & Cody and Trotter, Bondurant, Miller & Hishon) function as common law partnerships without written partnership agreements, King & Spalding has elected to adopt for itself a written partnership agreement which serves the same purposes that a corporate charter serves for a corporation. *See Bellis v. United States,* 417 U. S. 85, 96 (n. 4) (1974), in which the Supreme Court emphasized that the presence of a written partnership agreement would have reinforced its conclusion that a partnership has an independent identity that is separate from that of its partners.

2. *Continuing existence.* King & Spalding has elected to distinguish itself from a common law partnership by providing in the partnership agreement that the Firm, as an entity, has had a continuing existence since 1885, which is not affected by the admission of a new partner or the death, withdrawal or expulsion of any of its partners.

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[3]See page 40 below. Plaintiff has moved for the production of complete copies of the King & Spalding partnership agreements.

> "This firm began business January 1, 1885, under the firm name of King & Spalding . . . and currently the present firm name."
>
> Memorandum of Agreement effective as of January 1, 1978, ¶ 2.
>
> "(a) The firm shall continue until dissolved by vote of partners with at least 66-⅔% of the participating units. *The firm shall not be dissolved by the withdrawal, incapacity or death of any partner or partners, . . .*"
>
> Memorandum of Agreement effective as of January 1, 1978, ¶ 5(a).

In contrast, a common law partnership is dissolved automatically by the addition, withdrawal or death of one of its partners. Ga. Code Ann. § 75-701; *Harwell v. Cowan*, 175 Ga. 33 (1932).

3. *King & Spalding does business under a trade name.* King & Spalding is actually a trade name which is not the name of any of its present partners. The purpose of the Firm's use of a trade name is to give the Firm an institutional identity that is separate from the reputation of the many well-known lawyers who are presently associated with the Firm, with the expectation that the goodwill associated with the name "King & Spalding" will continue and will not be impaired by the death, retirement or transfer of any of its partners to other law firms. Corporations have long recognized the advantages of using trade names—"General Motors" or "Coca-Cola"—to give the enterprise an identity and continuity that would not be possible if business were conducted under the individual names of the dominant corporate officers and principal stockholders. By its deliberate use of a trade name, the Firm is attempting to es-

tablish and identify itself as the Coca-Cola or General Motors among law firms in Atlanta, if not nationally.

4. *Management of King & Spalding is vested in a "Board of Directors."* Management of King & Spalding is vested in a Management Committee which is elected by the partners in the same manner as "shareholders" elect Directors of a corporation, and who perform the same functions in the enterprise. While the King & Spalding Management Committee cannot alter the Firm partnership agreement (any more than the Directors of a corporation can amend its charter), the Management Committee's actions are otherwise binding on the Firm unless overridden by a 66-⅔% vote of the partners.

> "The firm shall be managed by a Management Committee comprised of five partners (the "Managing Partners") not less than one of whom shall be a partner will [*sic*] less than 900 participating units and each of whom shall be elected by the partners in the manner hereinafter provided. The members of the Management Committee shall be elected annually by the affirmative vote of partners with 66-⅔% or more of the participating units; . . . The members of the Management Committee shall select from among themselves a Chairman and a Secretary of the Management Committee. Each member of the Management Committee shall be elected to serve for a period of one calendar year. *The partners do hereby delegate to the Management Committee full and complete authority and responsibility to make any and all decisions, commitments and contracts with respect to the operation and management of the firm;* provided, however, that the Management Committee shall not have authority to act in a manner which would require a change in this Partnership Agreement for its accomplishment or implementation nor shall the Management Committee have the authority to act

with respect to any substantial question involving policies of operating the firm which, under paragraph 7 hereof, require the affirmative vote of partners with 66-⅔% of the participating units. *The Management Committee shall have full authority to create from time to time such other committees* as it might deem necessary or desirable in the proper conduct of the firm's business and to abolish any such committee so created. *The Management Committee is authorized to delegate to any other committee* which it might create such power and authority as said Committee shall deem to be proper in the circumstances; provided, however, said Committee shall continue to stand responsible to the firm for any and all action taken by any committee which it shall create. *No action taken by the Management Committee may be reversed or changed except by an affirmative vote of partners with 66-2/3% or more of the participating units.*"

Memorandum of Agreement effective as of January 1, 1978, ¶ 14.

In a common law partnership, decisions are made by a majority vote of the partners.

5. *King & Spalding partners do not own a share in the Firm assets.* A partner in King & Spalding does not acquire in any meaningful sense a pro rata ownership interest in the underlying Firm assets, as does a partner in a common law partnership.[4] When a King & Spalding partner withdraws or is expelled, he is entitled *only* to a *refund of his invested capital,* and his share of undistributed net earnings. The King & Spalding agreement expressly provides that:

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[4]The only circumstance under which a King & Spalding partner would receive a pro rata share of the underlying assets of the Firm would be in the event of a total dissolution.

"(a) It is agreed that upon the separation from the firm of any partner, whether by reason of voluntary or involuntary withdrawal or death, his interest in the firm's earnings and assets shall be as follows:

"(i) A refund of his cash capital contribution, if the firm's capital is unimpaired (to the extent there is impairment of the firm's capital, such partner shall be refunded only his proportion of unimpaired capital);

"(ii) The amount of undistributed net earnings to which he is entitled as shown by the firm's records as of the end of the month in which such withdrawal occurs."

Memorandum of Agreement effective January 1, 1978 ¶ 9(a).

In a common law partnership, a withdrawing partner would be entitled to receive a pro rata share of the firm's net assets in excess of its liabilities. Thus, although the value of King & Spalding's underlying assets (including leasehold improvements, furniture, fixtures, library and other physical assets, and its inventory of unbilled time, and accounts receivable) would probably exceed $6,000,000, a 2% partner who withdraws would not be entitled to receive 2% of $6,000,000 (*i. e.*, $120,000), but only a refund of invested capital and a 2% share of undistributed earnings.

6. ***Capital contributions at King & Spalding do not approximate the value of firm assets.*** Normally when one buys a ⅓ interest in a business having $100,000 in net assets, one would be expected to pay at least $33,333 to the existing partners for the share in the ownership of the assets being thus acquired. Although King & Spalding has also objected to discovery in this area, we believe that discovery will show that there is absolutely no relation-

ship between the size of a new partner's required capital contribution (which is rumored to be in the neighborhood of $5,000) and the fair market value of a proportionate share of the assets of the Firm at the time of his admission to partnership. If this is correct, it would undermine King & Spalding's "ownership" argument by demonstrating that the capital contribution is more nearly analogous to an "initiation fee" in a club, than it is a purchase of a share of or an "investment" in the assets of the Firm.

7. *Compensation of King & Spalding partners by partnership "points" is based on seniority and is not a return on invested capital.* Although King & Spalding has deleted the information regarding the point distributions among its partners from the copies of the partnership agreements produced for our inspection (and has refused to explain how partnership points are determined), we believe that discovery will show that a King & Spalding partner's "points" are allocated largely, if not exclusively, on a seniority basis, solely as a method of dividing Firm income among the partners, without affecting in any meaningful sense the partner's share in underlying Firm assets (see ¶ 5 above). Thus, King & Spalding partners are what the Third Circuit has described as "profit-sharing employees" of the Firm who are held out to the public as partners, but who (as noted in ¶ 6 above) have no meaningful ownership interest in underlying Firm assets beyond their own capital contributions, and unpaid shares of earned Firm income. *City of Wheeling v. Chester*, 134 F. 2d 759 (3d Cir. 1943). King & Spalding partners march up a seniority ladder in the same way that employees of large impersonal corporations receive periodic raises for

seniority, and that government employees progress from GS-9 to GS-11, etc.

8. *King & Spalding has insulated its partners from personal liability for malpractice and other tort claims just as the corporate form insulates its corporate officers from personal liability for torts committed by other corporate officers or employees.* One of the distinctions between the partnership and the corporate forms of doing business is the greater exposure of partners, than corporate officers or shareholders, to personal liability for negligence of those associated with the enterprise. We are confident that King & Spalding has effectively eliminated this distinction by purchasing liability insurance with ample policy limits to protect the Firm from any malpractice or other tort claims that may be asserted against it. Evidence of the existence and scope of such insurance coverage is plainly relevant and should, therefore, be required in response to Interrogatory No. 1(m) discussed at page 32 below.

2.

The opportunity that King & Spalding held out to plaintiff and that it holds out to all recruits, that they will be considered for partnership at the end of five years of loyal service, is a "term, condition or privilege" of employment under § 703(a) (1) of Title VII.

Even if the Court were to reject plaintiff's argument that King & Spalding has an identity separate from that of its partners for purposes of Title VII, and to hold that partnership in a law firm is not in itself an "employment" relationship which is covered by Title VII, the *opportunity* which plaintiff was offered by King & Spalding to induce her to accept employment with the Firm, and which she

possessed by *virtue of her status as an associate lawyer employed by King & Spalding,* of being considered for promotion to partnership after a minimum of five years' loyal service with the Firm, was a "term, condition or privilege of [her] employment" as an associate by King & Spalding within the meaning of § 703(a) (1) of Title VII, even if the "partnership" status itself is outside the coverage of the Act.

Even if "partnership" is itself not covered by the Act, the fact that King & Spalding holds out the opportunity of a promotion to its employees—to induce them to accept positions with the Firm in the first instance, and to remain and work extraordinarily hard as associates for at least five years—makes the *opportunity* a "term, condition or privilege of employment" which is covered by Title VII and cannot be denied on the basis of sex. *See Pettway v. American Cast Iron Pipe Co., supra,* discussed on pages 8-9, *supra.*

The complaint alleges that King & Spalding represented to plaintiff, and represents generally to other third-year law students and judicial law clerks whom King & Spalding is attempting to induce to accept employment by the Firm, that, if the associate will remain with the Firm for a minimum of five years, and will work hard and effectively during that period, the Firm will consider promoting the associate to partnership. Complaint ¶ 8(b); Answer ¶ 8(b).

The complaint also alleges and King & Spalding admits that the Firm tells all of its prospective employees that they will be afforded fair and equal consideration by

the Firm for partnership. Complaint ¶ 8(b); Answer ¶ 8 (b).[5]

The Second Circuit has held that an employee's "prospects for promotion were among the conditions of his employment." *NLRB v. Bell Aircraft Corp.*, 206 F. 2d 235, 237 (2d Cir. 1953). Furthermore, in the analogous context of employment discrimination in violation of the federal labor laws, the Supreme Court has held that, when a promotion is unlawfully denied to an employee who is covered by the Act, the protection of the statute is not lost simply because the position to which the employee would have been promoted but for the employer's unlawful discrimination was a supervisory position outside the coverage of the Act. *Golden State Bottling Co., Inc. v. NLRB*, 414 U. S. 168, 188 (1973). In that case an employee was discriminatorily denied promotion to a supervisory position which was outside the coverage of the NLRB because of his union activities. The Supreme Court cited with approval the Second Circuit's decision in *Bell Aircraft* and held that the discriminatory denial of a promotion violated the Act even though the position in management of the company was outside the coverage of the Act. The Court quoted with approval the Court of Appeals, which had said:

> "'The Act's remedies are not thwarted by the fact that an employee who is within the Act's protections

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[5]The Court can probably take judicial notice of the fact that there is vigorous competition among large law firms to hire law students who are at the top of their classes, as was plaintiff, and that such representations are essential for any law firm that hopes to recruit bright law students or law clerks—none of whom would accept employment as an associate of even a firm as prestigious as King & Spalding if the firm did not hold out as an inducement the prospect of admission to partnership.

when the discrimination occurs would have been promoted or transferred to a position not covered by the Act if he had not been discriminated against. *NLRB v. Bell Aircraft Corp.*, 206 F. 2d 235, 236-237 (2d Cir. 1953).' 467 F. 2d at 166."

414 U. S. at 188.

Pettway v. American Cast Iron Pipe Co., supra (discussed at pages 8-9, *supra*); *see also Lucido v. Cravath, Swain & Moore, supra* ("The opportunity to be promoted to a position not itself covered by Title VII does not mean that the discrimination in that promotion cannot be protected by Title VII." 425 F. Supp. at p. 128).

Thus, even if the Court should hold that partnership in a large institutional law firm is not itself an employment relationship vis-a-vis the Firm that is covered by the Act, King & Spalding's motion to dismiss must be denied because the promotional opportunity which King & Spalding holds out to each associate is a "term, condition or privilege of employment" as an associate at King & Spalding which cannot be discriminatorily denied on the basis of sex.

3.

King & Spalding's decision to deny plaintiff admission to partnership also resulted in her involuntary termination as an associate of the Firm by virtue of the application of the Firm's "up or out policy," and was, therefore, covered by Title VII.

King & Spalding baldly admits in both its Answer, ¶ 9, and in the brief filed in support of its motion that plaintiff's employment by King & Spalding as an associate was involuntarily terminated under King & Spalding's "up or out policy" because ***she was not admitted to partnership.*** See footnote 1 (pages 1-2) above.

If the Firm's decision to exclude plaintiff from partnership was based on her sex as the complaint alleges, then it is obvious that this act of discrimination also injured plaintiff in her employment by King & Spalding, and is, therefore, subject to redress under Title VII. *See Lucido v. Cravath, Swain & Moore*, 423 F. Supp. 123, 128 (S. D. N. Y. 1977).

Plaintiff's Discovery

It is the position of the plaintiff that the discovery sought from King & Spalding is directly relevant to one or more of the three legal theories outlined above, or to defenses pleaded by King & Spalding in its answer in opposition to these theories, and is, therefore, plainly authorized by Rule 26(b) (1), which defines the scope of discovery as follows:

> "(b) SCOPE OF DISCOVERY Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows"
>
> > "(1) *In General.* Parties may obtain discovery regarding *any matter,* not privileged, which is *relevant* to the subject matter involved in the pending action, *whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party,* including the existence, *description,* nature, custody, condition and location *of any books, documents,* or other tangible things and *the identity and location of persons having knowledge of any discoverable matter.* It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Federal Rules of Civil Procedure Rule 26(b) (1).

Plaintiff's First Interrogatories to
King & Spalding served April 10, 1980

King & Spalding's General Objections

Despite the provisions of Local Rule 91.613, which states that "objections . . . shall be addressed to the specific interrogatory . . . and may not be made generally," King & Spalding has made the following "General Objections" to plaintiff's interrogatories, each of which should be overruled:

King & Spalding's General Objection No. 1

> "This defendant objects to plaintiff's First Interrogatories to the extent that they seek information regarding any period of time other than the 'Time Period' as defined in paragraph 3 of the Interrogatories on the ground that information regarding any other time is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence and on the further ground that the burden on this defendant to respond to interrogatories with regard to any other time far exceeds the value to plaintiff of the information sought."

Plaintiff's Response

While King & Spalding's blanket objection to being required to respond to any discovery outside January 1, 1972-December 31, 1979, the "Time Period" defined in plaintiff's First Interrogatories, does not present a problem with respect to most of the questions propounded by plaintiff in the first set of interrogatories, it is important to establish the principle *now* that when discovery focuses on the *merits* of the case, King & Spalding will not be entitled to restrict plaintiff's right to conduct discovery aimed at developing evidence of its discriminatory hiring

and promotional practices, its attitudes and statistical data, only for the seven years of plaintiff's employment as an associate by King & Spalding. It is plaintiff's position that plaintiff will be entitled to full discovery covering a substantial period of time preceding her employment as an associate in 1972 for the purpose of establishing that King & Spalding discriminated *tota'ly* against women (and Jews and blacks) prior to that time,[6] and that those discriminatory attitudes on the part of some individuals composing a voting majority of King & Spalding partners, while perhaps less overt and more subtle, continue to have an impact on the Firm's attitudes, policies and treatment of women generally and plaintiff in particular. This case is no different from an antitrust case, in which the courts generally, and Your Honor in particular, have ruled that evidence of conspiratorial acts of defendants occurring long before the period open under the statute of limitations is not only discoverable under Rule 26, but *admissible* at a trial for purposes of proving that the defendants also conspired at some later time.

King & Spalding's General Objection No. 2

> **"This defendant objects to plaintiff's First Interrogatories to the extent that they request this defendant to 'identify' documents on the grounds that said request is unduly burdensome and repetitious in light of plaintiff's Request for Production of Documents, which was filed contemporaneously with plaintiff's First Interrogatories and seeks the production**

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[6]King & Spalding employed a woman lawyer, Antha Mulkey, as a "permanent associate" until 1977. See Martindale-Hubbell Law Directory for the years 1964-1977. Ms. Mulkey's status will be the subject of extensive examination when we reach merits discovery.

> of all documents identified in King & Spalding's responses to those interrogatories."

Plaintiff's Response

An interrogatory which requests the identification of documents in the possession of or known to a party that refer to subjects relevant to the litigation is expressly authorized by Rule 26(b) (1) quoted above and is plainly "calculated to lead to the discovery of admissible evidence" and is, therefore, unquestionably proper.

King & Spalding's objection on ground of burden is both frivolous and disingenuous: It is frivolous because plaintiff's First Interrogatories specifically relieved King & Spalding of the burden of preparing a tedious list of documents if the Firm would attach legible copies of the documents to its answers.

> In lieu of identification of a document, defendant may attach a legible copy of the documents to its answers to these interrogatories, *provided* that the documents so attached are specifically marked so as to indicate the particular interrogatory to which each document is deemed responsive."
>
> **Plaintiff's First Interrogatories to King & Spalding, p. 3.**

It is disingenuous to imply—as King & Spalding does by its statement that the "request is unduly burdensome and repetitious in light of plaintiff's Request for Production of Documents . . . ,"—that the Firm intended to produce the requested documents for inspection under Rule 34 and, therefore, should not be required to list them in answers to the interrogatories—when the Firm has "stonewalled" the production of documents in response to plaintiff's First request for Documents. The only documents

produced by King & Spalding were abridged copies of its partnership agreements—which Your Honor specifically said at the conference in chambers on April 15, 1980 would have to be produced by King & Spalding, and a Confidential Memorandum to All Associates dated January 20, 1975, which counsel for the plaintiff had already advised counsel for the defendant, Mr. Handley, was in the possession of plaintiff in a telephone call on May 9, 1980.

King & Spalding's General Objection No. 3

> "This defendant objects to plaintiff's First Interrogatories to the extent that they seek the identification or disclosure of any communication or document protected from discovery by the attorney work-product doctrine or the attorney-client privilege."

Plaintiff's Response

While plaintiff does not dispute that *under appropriate circumstances* King & Spalding may be entitled to withhold production of documents that are protected by the attorney-client privilege or work-product, the Firm cannot refuse to *identify* documents for which it intends to claim a privilege. Identification of responsive documents being withheld under a claim of privilege is essential so that plaintiff will know that a document (or conversation) exists for which a privilege is being claimed. Since the burden rests on the person claiming a privilege to demonstrate its availability [*United States v. Kelly*, 569 F. 2d 928, 938 (1978), *cert. denied*, 439 U. S. 829 (1978); *Barkley-Cupit Enterprises, Inc. v. The Equitable Life Assurance Society of the U. S.*, N. D. Ga. C-79-5858 (Mar. 14, 1980)], King & Spalding is under an obligation

not only to identify the document itself with reasonable particularity, but also to provide sufficient facts to indicate that the privilege being claimed is at least *prima facie* applicable. *Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146, 1156-58 (D. S. C. 1974). Without this minimal information, neither the plaintiff nor this Court can make an informed judgment whether the privilege was claimed properly or improperly, and whether to contest the claims of privilege by seeking an *in camera* inspection by the Court.

Because of the blanket objections by King & Spalding, plaintiff is unable to tell whether King & Spalding has, in fact, refused to identify any documents which actually exist (or failed to disclose any other information called for by the plaintiff's First Interrogatories) on the ground that such documents or information are protected from discovery or as work product or on grounds of the attorney-client privilege. We assume, however, that King & Spalding would not trifle with the Court by filing a blanket general objection on grounds of privilege if there were no documents or other information called for by plaintiff's First Interrogatories for which it was making a claim of privilege.

Particular Interrogatories Which King & Spalding Should be Compelled to Answer

In addition to the "general objections," King & Spalding has also objected to and refused to answer the following interrogatories:

Plaintiff's Interrogatory No. 1(c)

"(c) (1) Has the defendant or any partner thereof prepared any document which describes or summarizes the history of the defendant?

"(2) If so, please identify each such document."

King & Spalding's Response to Interrogatory No. 1(c)

"(c) This defendant objects to subpart (c) of Interrogatory No. 1 on the grounds set forth in General Objection No. 1, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant states that neither the defendant nor any partner thereof has prepared any document which describes or summarizes the history of the defendant during the Time Period as defined in plaintiff's Interrogatories."

Plaintiff's Reasons for Compelling an Answer

A firm history prepared prior to January 1, 1972 may contain evidence directly relevant to the "coverage" question presently before the Court. For example, a firm history prepared prior to the 1972-1979 Time Period might contain information touting the "Firm" as an institution separate and distinct from its partners, and emphasizing that "the whole [Firm] is greater than the sum of its part[ners]."

This information would be directly relevant to plaintiff's contention that the fact that King & Spalding is a partnership does not automatically remove the Firm from the coverage of Title VII, and that the economic reality of King & Spalding's organizational structure and methods of operation are sufficiently similar to those of other businesses to require that King & Spalding's promotional decisions be subjected to the same prohibitions against discrimination on the basis of sex, race and religion as are the promotional decisions of many smaller businesses that have at least 15 employees.

Plaintiff's Interrogatory No. 1(d) (1)

"(d) (1) When did defendant revert to the name "King & Spalding?

"(2) Please identify all such documents which refer to the reasons that defendant decided to use the name 'King & Spalding.'

"(3) To the extent the reasons for the defendant's reverting to the name 'King & Spalding' are not fully stated in the document identification of which is requested in subparagraph (2) above, please state such reasons."

King & Spalding's Response to Interrogatory No. 1(d) (1)

"(d) This defendant objects to subpart (d) of Interrogatory No. 1 for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant states:

"(1) A law firm known by the name King & Spalding has existed at several times as reflected in the answer to subparts (a)-(b) above. This defendant adopted the name of King & Spalding in 1962."

Plaintiff's Reasons for Compelling an Answer

King & Spalding appears to be contending that because it adopted the trade name "King & Spalding" in 1962, before plaintiff's employment, the *reasons* that the Firm chose to conduct its business under a trade name, rather than under the name of its then active partners as most other law firms in Atlanta have done, are irrelevant.

King & Spalding's reasons for using a trade name are relevant to support plaintiff's contention that the Firm has sought and acquired for itself an *impersonal, institutional*

identity separate from that of its partners, and should, therefore, be treated for Title VII purposes as other business entities are treated. *See Bellis v. United States, supra.*

Plaintiff's Interrogatory No. 1(f)

> "(f) (1) Were there any portions of the partnership agreement of defendant in effect during the Time Period which are not fully set forth in the written partnership agreements referred to in subparagraph (e) above?
>
> "(2) If the answer is 'yes,' please state the full terms of the portions of the partnership agreement that were not in writing, and the time periods during which such unwritten portions of the partnership agreements were in effect."

King & Spalding's Response to Interrogatory No. 1(f)[7]

> "(f) (1) See Response to Interrogatory 1(e) (1) above.
>
> "(2) not applicable."

Plaintiff's Reasons for Compelling an Answer

A responsive answer to Interrogatory No. 1(f) (1) is either "yes" or "no." Plaintiff is unable from the answer as presently framed to determine whether the *written* partnership agreements constitute *all* of the agree-

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[7] In its response to Interrogatory No. 1(e)(1), King & Spalding said:

> "At various times during the Time Period, the firm has had a written partnership agreement in effect. At other times within the Time Period, there was no written agreement in effect, due generally to the fact that a new agreement was not immediately prepared or executed upon a change in the membership of the partnership."

ments between partners, or whether there are additional oral understandings between partners at King & Spalding that constitute a part of the partnership agreement, but have not been reduced to writing. A responsive answer to Interrogatory No. 1(f) (1) [*i.e.*, "yes" or "no"] should be required.

If the answer to Interrogatory No. 1(f)(1) is "yes," King & Spalding should be required to provide the information called for by subparagraph 1(f) (2).

Plaintiff's Interrogatory No. 1(h)

> "(h) Please (1) describe the organizational structure of defendant during the Time Period, and (2) identify all committees, departments and administrative positions of the defendant, and state with respect to each such committee, department or administrative position:
>
> "(A) Its name.
>
> "(B) Identify all documents that set forth the duties and responsibilities of each such committee, department, or administrative position, or, if such duties are not fully set forth in written form, state the duties and responsibilities of each.
>
> "(C) The names of the members of each such committee or department, or the holder of any administrative position, during each year since January 1, 1972.
>
> "(D) Identify by categories the records maintained by each such committee, department or administrative position."

King & Spalding's Response to Interrogatory No. 1(h)

> "(h) This defendant objects to subpart (h) of Interrogatory No. 1 on the ground that the request

to describe 'the organizational structure' of this defendant is unduly vague and not subject to a reasonable interpretation and upon the further ground that said request is unduly burdensome upon this defendant. Subject to and without waiving this objection, this defendant states that various committees or administrative positions existed within the firm for part or all of the Time Period. As a preface to the description of these committees or positions, this defendant states that the primary duty of every lawyer at King & Spalding, whether partner or associate, is the practice of law. The administrative positions described below constitute collateral administrative duties which are performed by various partners at various times, but these duties are at all times secondary to the practice of law. Further, all of these committees or administrative positions are ultimately accountable to the partnership as a whole, which retains the ultimate decision-making power on all substantial questions involving policies of operating the firm. See §§ 7.14 of Partnership Agreement.

"(1) (A) The Management Committee

"(B) The duties and responsibilities of the Management Committee are defined in the Partnership Agreement. The Management Committee in its present form (originally called the Executive Committee) was formed by the partnership in 1974.

"(C) King and Spalding objects to this subpart to the extent that it seeks the identification of members of the Management Committee of King & Spalding at any time other than May, 1978 or May, 1979, in that such information is not related to the subject matter of plaintiff's action and is not reasonably calculated to lead to the discovery of admissible evidence with regard to this action. Subject to and without waiving this objection, this defendant states that, as of May, 1978, the Management Committee of King & Spal-

ding was comprised of the following individuals: Hughes Spalding, Jr., James M. Sibley, Byron Attridge, Robert L. Steed, and Harry C. Howard. As of May, 1979, the Management Committee was comprised of the following individuals: James M. Sibley, Byron Attridge, Robert L. Steed, Harry C. Howard, Robert W. Hurst.

"(D) Minutes of the meetings of the Management Committee exist for the period from 1972 to the present.

"(2) (A) Lawyer Administrative Partner

"(1) (B) During the Time Period, the Lawyer Administrative Partner had overall responsibility for recruitment, employment, assignment, evaluation and supervision of all legal and paralegal personnel, with the mandate to insure that professional obligations are carried out on all client matters with quality, service and timely performance and with a view toward the harmony of working conditions for legal and paralegal personnel. The Lawyer Administrative Partner serves as the person to whom any lawyer in the firm may express any opinion or view which he wishes to communicate to the partnership. The Lawyer Administrative Partner also has such other duties as the Management Committee may define from time to time.

"(2) (B) These duties are outlined in a 1975 memorandum to all firm personnel from the Management Committee ('1975 Memorandum'). The duties outlined in the 1975 Memorandum have been modified and reassigned from time to time.

"(C) James M. Sibley

"(D) The Lawyer Administrative Partner maintains no such records with regard to this administrative position.

"In addition to the two specific positions discussed above, this defendant has during the Time Period, as

outlined in the 1975 Memorandum, also had Finance, Office, and Client Administrative Partners, as well as a Hiring Committee, a Fee and Client Committee, a Secret Art Committee, an Associate Orientation Committee, an associate Partner, a Paralegal Administrative Partner, and various other positions or committees at various times. The committees and administrative positions are appointed by the partnership or the Management Committee on an ad hoc basis and perform duties and responsibilities as assigned. This defendant objects to providing information in addition to that provided in the 1975 Memorandum for these committees or positions on the ground that said requests are overly broad and unduly burdensome.

"For further answer, this defendant states that during the Time Period, it has been more or less divided for certain administrative purposes into the following departments: Corporate, Antitrust, Securities, Municipal Finance, Banking, Litigation, Real Estate and Tax. Matters are frequently handled by lawyers from more than one department, depending on the nature of the legal problem faced by the client. Moreover, lawyers initially assigned to one department frequently move to other departments. Plaintiff was, at all times during her employment with King & Spalding, assigned to the Real Estate Department. This defendant objects to identifying the Administrative Partners and attorneys assigned to various departments on the ground that said identification relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim."

Plaintiff's Reasons for Compelling an Answer

(1) A request that a business entity describe its organizational structure is not vague.

(2) King & Spalding's objection to disclosing the names of members of its Management Committee and

other committees at any time other than May 1978 and May 1979 should be overruled. Plaintiff is entitled to the identification of *all* persons who were members of the Management Committee during the 1972-1979 time period, because they may have recollections of facts pertaining to the operations, policies, structure and reporting relationships and procedures for selecting and admitting partners and determining their compensation, that are not the same as those of the individuals who happened to hold those offices in May 1978 and May 1979. See Rule 26(b)(1) which expressly makes the identity of potential witnesses discoverable.

(3) Plaintiff is entitled to an identification of all documents which are requested in Interrogatory No. 1 (h)(2)(B) defining the duties and responsibilities of King & Spalding's committees, departments and positions. Rule 26(b)(1). Such documents are plainly relevant to show that King & Spalding is centrally managed—much as a corporation is managed—and not as a plebiscite among partners meeting as a committee of the whole.

(4) Plaintiff is entitled to identification of the categories of records maintained by each committee, department and administrative partner of King & Spalding, as requested by Interrogatory No. 1(h)(2)(C). Such information may lead to the discovery of evidence relevant to support plaintiff's contention that King & Spalding is operated internally as a corporation is operated and to assist plaintiffs in framing a Notice to Produce.

(5) Because of the enormous power conferred on King & Spalding's Management Committee or "Board of Directors" by the partnership agreement, minutes of that

committee and of the Firm as a whole are likely to contain highly relevant evidence that will demonstrate—as the bare bones agreement does not—how the Management Committee has operated *in fact*, what categories of decisions are deemed by the Management Committee to be within its jurisdiction, and the extent to which decisions or "recommendations" of the Management Committee are "rubber stamped" by the Firm as a whole. Plaintiff cannot tell from the partnership agreement, for example, whether a recommendation that a particular associate be promoted to partnership is one which is made by the Management Committee in the first instance, and, if recommended by the Management Committee, whether that recommendation is one which is binding on the Firm unless rejected by a 66-2/3 vote of the points, or one which fails unless affirmatively approved by a 66-2/3 vote. *How* partnership decisions are made is a central issue to the coverage question before the Court and a complete response to Interrogatory No. 1(h) and complete production of the minutes and other documents description of which is requested therein should be required.

Plaintiff's Interrogatory No. 1(i)

> **"(i) With respect to 'Administrative Partner' positions of the defendant which existed at any time during the Time Period, state the following information:**
>
> **"(1) Identify the title of the position.**
>
> **"(2) (A) Identify all documents which set forth or define the duties and responsibilities of such position, and (B) if such duties and responsibilities are not fully set forth in written form, state the unwritten powers and duties of each such position.**

"(3) Identify each person holding such position during the Time Period.

"(4) Identify by type or category and a general description of contents the records maintained by or under the supervision of the person in such position."

King & Spalding's Response to Interrogatory No. 1(i)

"(i) King & Spalding objects to subpart (i) of Interrogatory No. 1 to the extent that it seeks information with regard to the 'Administrative Partner' positions other than what is described in the 1975 Memorandum and the responses to subpart (h) above on the grounds that such information is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. With regard to the Lawyer Administrative Partner, see the responses to subpart (h) above."

Plaintiff's Reasons for Compelling an Answer

All of the information requested by Interrogatory No. 1(l) is relevant in itself, or is at least reasonably calculated to lead to the discovery of relevant evidence, for the same reasons the information requested in Interrogatory No. 1(h) is discoverable.

Plaintiff's Interrogatory No. 1(j)

"(j) Does the defendant maintain minutes or other documents reflecting the substance of (1) general meetings of defendant's partners, (2) general meetings of defendant's partners and associates, (3) meetings of committees of the defendant, and (4) meetings of departments of the law firm, and, if so, for what period of time have such minutes or other documents been maintained?"

King & Spalding's Response to Interrogatory No. 1(j)

"(j) This defendant objects to subpart (j) of Interrogatory No. 1 for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein by reference. Subject to and without waiving this objection, this defendant maintains minutes or records of the meetings of the following committees for the period of time shown:

"Management Committee (1972—Present; provided, however, that prior to 1977, such minutes were prepared and maintained on a sporadic basis).

"Partnership Meetings (1972—Present). This defendant also maintains for certain periods of time minutes of the meetings of its Hiring Committee, but objects to the identification or production of those minutes on the ground that they are not related to the subject matter of the pending action and are not reasonably calculated to lead to the discovery of admissible evidence."

Plaintiff's Reasons for Compelling an Answer

As explained in the discussion of Interrogatory No. 1(h) above, minutes of meetings of defendant's committees, and particularly minutes of the general partnership meetings and of the Management Committee, are likely to contain evidence demonstrating that the Firm is operated in the same manner as business corporations. This includes evidence that primary authority and that control of the business operations of the Firm are concentrated in King & Spalding's equivalent of a corporate Board of Directors. Minutes of such meetings will also show *how*, and by *whom*, lawyers are admitted to partnership, as a practical (as distinguished from a theoretical) matter. Identification and production of the minutes should be required since the minutes are reasonably calculated to lead to the discovery of evidence relevant to the coverage question.

Plaintiff's Interrogatory No. 1(k)

> "(k) Please identify all documents which refer to or reflect the following information pertaining to (1) the defendant's policy and procedure for determining capital or other financial contributions required by the defendant in connection with the admission of a new partner to the firm, (2) the percentage of ownership of the assets of the defendant acquired by a new partner, (3) the percentage or amount of firm capital or assets which a partner is entitled to receive as a matter of right from the firm upon voluntary withdrawal, expulsion, or death."

King & Spalding's Response to Interrogatory No. 1(k)

> "(k) This defendant objects to subpart (k) of Interrogatory No. 1 for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein by reference. This defendant further objects to subpart (k) of Interrogatory No. 1 on the ground that the information sought therein is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence with regard to this action. Subject to and without waiving its objection, this defendant states that information of the nature sought in subpart (k) is included in the Partnership Agreement."

Plaintiff's Reasons for Compelling an Answer

Defendant contends that "ownership" is a predominant factor in becoming a partner in King & Spalding. Plaintiff is entitled to discover information called for by Interrogatory No. 1(k) (1) and (2) that will rebut this contention by demonstrating that new partners are required to make only modest or nominal contributions to Firm Capital, that are much less than the value of their proportionate share of underlying Firm assets, and that

the income which a new partner receives from the Firm is in reality compensation for personal services, and not a "dividend" or other return on his nominal capital investment. None of this information is contained in the censored versions of the partnership agreements produced by defendant. Specific dollar figures are relevant because they will show in concrete terms precisely how extreme and disproportionate are the relationships between the amount of a new partner's capital contribution as compared to his income from the Firm, and to the value of underlying Firm assets.

Plaintiff's Interrogatory No. 1 (l)

> "(l) Please (1) identify all documents which set forth the procedure, method, system or criteria used by the defendant or any committee thereof to determine the compensation of partners in defendant, and (2) if such procedure or method is not fully set forth in any documents, please state the procedure, method, system or criteria used by the defendant to determine the compensation of partners."

King & Spalding's Response to Interrogatory No. 1 (l)

> "(l) This defendant objects to subpart (1) of Interrogatory No. 1 on the grounds that the information requested therein is not related to the subject matter of the pending action and is not reasonably calculated to lead to the discovery of admissible evidence with regard to this action.
>
> "This defendant further objects to subpart (1) to the extent that it seeks information about procedures or criteria used at any time other than the Time Period for the reasons set forth in General Objection No. 1, which General Objection is incorporated herein. Subject to and without waiving this objection, this defendant states:

"(1) None other than the Partnership Agreement.

"(2) The procedures for determining the compensation of partners within this defendant vary from year to year, but generally involve obtaining an agreement of the partnership as a whole, as provided by §§ 7, 14 of the Partnership Agreement."

Plaintiff's Reasons for Compelling an Answer

Information as to the procedure, method, system or criteria used by the Firm in determining compensation of partners is directly relevant to show (1) that King & Spalding's compensation system is very similar to the impersonal seniority-based systems used by the Federal Government and many corporations to compensate their employees, (2) that the amount of a partner's compensation cannot be increased by an individual partner's decision to unilaterally increase his capital contribution (thus demonstrating that partnership income is *not* a payment for "ownership" rights in the Firm or a "dividend" on invested capital, but compensation for work performed for Firm clients that is indistinguishable from the work performed by other lawyers in the Firm who happen to be associates rather than partners), and (3) that partners at King & Spalding are, in real economic terms, as much "profit-sharing employees" of the Firm, as were the partners in the engineering firm in *City of Wheeling v. Chester*, 134 F. 2d 759 (3d Cir. 1943).

If rumors among the Atlanta Bar are correct, in 1978 or 1979, King & Spalding established two classes of new partners—one group of new ("full") partners who receive a full allocation of points available for first-year partners, and a second category of new partners who receive a less-

than-full allocation of partnership points than those allocated to "first-class" new partners. Such evidence would tend to reinforce plaintiff's contention that at least some individuals who are nominally called "partners" in defendant do not have the full status of other partners and that an intervening position has been created by King & Spalding for lawyers who are neither "associates" nor "partners," which might have been made, but was not, available to plaintiff due to her sex.

Plaintiff's Interrogatory No. 1(m)

> "(m) (1) Did the defendant maintain professional malpractice insurance during the Time Period?
>
> "(2) If so, please state the monetary limits of such policies applicable to errors, omissions or professional malpractice by (A) partners of defendant, (B) associates of defendant."

King & Spalding's Response to Interrogatory No. 1(m)

> "(m) King & Spalding objects to subpart (m) of Interrogatory No. 1 on the grounds that said Interogatory relates to a defense asserted by this defendant to plaintiff's claim and therefore is not properly within the scope of discovery as authorized by the Court's Order of April 15, 1980 [*sic*, April 23, 1980]. King & Spalding further objects to Interrogatory 1(m) on the grounds that said Interrogatory relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim. Subject to and without waiving this objection, this defendant states:
>
> "(1) Yes.
>
> "(2) This defendant objects to subpart (2) of part (m) of Interrogatory No. 1 on the grounds that the information requested therein is not related to the subject matter of the pending action and is not

reasonably calculated to lead to the discovery of admissible evidence with regard to this action."

Plaintiff's Reasons for Compelling an Answer

In its brief in support of its motion to dismiss, King & Spalding has attempted to capitalize upon the fact that "a mistake by any partner becomes, in the eyes of the law, the mistake of the partnership, and accordingly threatens the professional and economic well-being of all partners" (Brief p. 18) to argue that King & Spalding should be able to discriminate on the basis of race or sex in the admission of partners. King & Spalding conveniently omits to mention that the Firm is liable for the "mistakes" of its *lawyers* in the performance of their professional practice, without regard to whether the negligent lawyer is a "partner" or an "associate." Since King & Spalding has raised the specter of malpractice liability, however, plaintiff is entitled to discovery to show that the Firm has obtained insurance that insulates it from that risk.

The existence and amount of King & Spalding's malpractice insurance is relevant to demonstrate that, as a practical matter, King & Spalding partners are as insulated from personal liability for the acts of negligence on the part of a new partner, as are officers and shareholders of corporations for the acts of negligence on the part of other corporate officers and employees. Thus, one of the principal distinctions between the partnership and corporate forms of transacting business has been effectively eliminated in King & Spalding's case by the existence of liability insurance with large policy limits.

Plaintiff's Interrogatory No. 5

"Please identify all documents which state, in whole or in part, the standards, criteria, procedures

or policies utilized by defendant during the Time Period concerning the following subjects:

"(a) Evaluation of Associate Performance, including but not restricted to (1) criteria for evaluation of associates, (2) coordination of evaluation by partners, (3) communication to partners and to associates individually the results of associate evaluations, (4) criteria for admission to partnership, and (5) decisions or recommendations of termination of associates.

"(b) Criteria for advancement to partnership.

"(c) Compensation policies for legal personnel.

"(d) Establishment of number of lawyers to be hired, or admitted to partnership.

"(e) Equal employment practice policies pertaining to legal personnel.

"(f) Hiring, including but not limited to (1) criteria for job offer, (2) Recruiting Committee procedures, (3) policies regarding employment of lawyers."

King & Spalding's Response to Interrogatory No. 5

"King & Spalding objects to Interrogatory No. 5 on the grounds that said Interrogatory relates to a defense asserted by this defendant to plaintiff's claims and therefore is not properly within the scope of discovery as authorized by the Court's Order of April 15, 1980 [*sic*, April 23, 1980]. King and Spalding further objects to Interrogatory No. 5 on the grounds that said Interrogatory relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim."

Plaintiff's Reasons for Compelling an Answer

As we have pointed out in discussing Interrogatory No. 1(c) and 1(h) above, plaintiff is entitled to discovery

regarding the internal standards, procedures, criteria and policies utilized by King & Spalding, for the purpose of demonstrating that, although the Firm is technically organized in the form of a common law partnership, the *substance* and reality of the Firm's operations, and in particular its *method* of making employment and promotional decisions, are highly institutionalized and impersonal as are similar decisions by other business entities. In this interrogatory plaintiff is not attempting to develop evidence that King & Spalding in fact discriminated against plaintiff or any other individual, but that the *methods* and *procedures* utilized by King & Spalding were such that King & Spalding should be treated as any other business entity is treated for purposes of Title VII. Interrogatory No. 5(e), which asks about internal documents reflecting King & Spalding's EEOC policies pertaining to legal personnel, may contain admissions of fact or law that are inconsistent with the contentions being advanced by King & Spalding in support of its motion to dismiss.

Plaintiff's Interrogatory No. 6

> "With reference to the Fifth Defense stated in the answer that "[p]laintiff's claims under Title VII are barred because defendant is not a person engaged in an industry affecting commerce within the meaning of Title VII," please state the following information:
>
> "(a) Please state all facts on which defendant relies to support such contention.
>
> "(b) Please identify all documents on which defendant relies to support such contention.
>
> "(c) Please identify all persons who are known to defendant or to defendant's attorneys to have personal knowledge of such facts."

King & Spalding's Response to Interrogatory No. 6

> "This defendant objects to Interrogatory No. 6 on the grounds that said Interrogatory seeks information regarding a defense to plaintiff's claim of employment discrimination and, therefore, is beyond the scope of discovery authorized by the Court in its ruling on April 15, 1980 [*sic*, April 23, 1980]."

Plaintiff's Reasons for Compelling an Answer

Defendant has moved to dismiss the plaintiff's Title VII claims on the ground that King & Spalding's actions with reference to the plaintiff are not covered by Title VII as a matter of law. One of the grounds for this contention is apparently its Fifth Defense quoted above.

In its Order of April 23, 1980, the Court limited discovery to the threshhold question of the coverage of King & Spalding by Title VII, to which the Fifth Defense is plainly relevant. Since Rule 26(b)(1) provides that discovery may be had "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the *claim* or defense of the party seeking discovery *or to the claim or defense of any other party . . .*," the information sought by Interrogatory No. 5 is plainly discoverable and King & Spalding should be required to answer.

Plaintiff's Interrogatory No. 7

> "With reference to the allegations of paragraph 2(a) of the Eighth Defense of the answer that "defendant denies that it is a person engaged in an industry affecting commerce," please state the following information:
>
> "(a) Please state all facts on which defendant relies to support such contention.

"(b) Please identify all documents on which defendant relies to support such contention.

"(c) Please identify all persons who are known to defendant or to defendant's attorneys to have personal knowledge of such facts."

King & Spalding's Response to Interrogatory No. 7

"This defendant objects to Interrogatory No. 7 on the grounds that said Interrogatory seeks information regarding a defense to plaintiff's claim of employment discrimination and, therefore, is beyond the scope of discovery authorized by the Court in its ruling on April 15, 1980 [*sic*, April 23, 1980]."

Plaintiff's Reasons for Compelling an Answer

King & Spalding should be required to answer Interrogatory No. 7 for the same reasons it should be compelled to answer Interrogatory No. 6.

Plaintiff's Interrogatory No. 8

"(a) Does defendant contend that it is not engaged in interstate commerce?

"(b) If so, please state the following information with respect to defendant's last complete fiscal year:

"(1) The total fees received by the defendant for the rendition of legal services and the amount of fees billed by defendant's (A) Atlanta office and (B) defendant's Washington office.

"(2) The total revenues of the defendant derived from legal services rendered to clients with respect to litigation pending in Georgia, real estate transactions involving real property located exclusively in Georgia, bond or other securities, offerings for offerors located exclusively in

Georgia where all the purchasers located within Georgia.

"(3) The total revenues derived by defendant from the following:

"(A) The rendition of legal services with reference to any court or administrative proceedings located outside Georgia.

"(B) The rendition of legal services with reference to any real estate transactions involving property outside the State of Georgia.

"(C) The rendition of legal services in connection with any offering or sale of securities by an issuer having its principal place of business outside the State of Georgia, or which required registration, or exemption under the laws of a state other than Georgia, or which was closed outside the State of Georgia.

"(D) The rendition of any other legal services to clients whose principal offices were located outside the State of Georgia, and which involved the application of procedural or substantive law of a state other than Georgia.

"(4) (A) The number of trips made by lawyers of defendant to points outside Georgia in the course of rendering professional services for clients, (B) the number of days spent by lawyes of defendant outside the State of Georgia in the course of rendering professional services for clients, and (C) the cost of such trips to the defendant or its clients.

"(5) (A) The number and (B) cost of long distance telephone charges incurred by defendant in the course of rendering professional services for clients."

King & Spalding's Response to Interrogatory No. 8

"(a) This defendant contends that it is not engaged in interstate commerce within the meaning of Title VII, which refers to a 'person engaged in an industry affecting commerce,' in that this defendant is engaged in a profession, not an industry. This defendant states, however, that it derives a substantial portion of its total fees from clients who reside or have their principal place of business outside of the State of Georgia and will further stipulate that, in performing legal services for these clients and for its clients within the State of Georgia, lawyers who are members of or are employed by this defendant make numerous trips to points outside of Georgia. This defendant further states that these trips are made in association with, *inter alia*, rendering legal services in court or administrative proceedings located outside of Georgia, rendering legal services with reference to real estate transactions involving real property outside of the State of Georgia, rendering legal services in connection with the sale of securities by an issuer having its principal place of business outside of the State of Georgia, and rendering other legal services to clients whose principal offices are located outside the State of Georgia.

"(b) King & Spalding objects to subpart (b) of Interrogatory No. 8 on the grounds that, in light of the facts stated in its response to subpart (a) above, the specific information requested in subpart (b) is overly broad and unduly burdensome to this defendant."

Plaintiff's Reasons for Compelling an Answer

King & Spalding's answer to Interrogatory No. 8 is ambiguous and evasive. If King & Spalding intends its answer to mean that it concedes that the Firm is "engaged in interstate commerce" (so that the fact and amount of the interstate commerce conducted by King & Spalding is

not an issue in the case and need not be proved by plaintiff), but that because the Firm is engaged in the practice of law, rather than some other business, it is not engaged in an "industry, then King & Spalding should say so clearly and unequivocally.

If King & Spalding intends to preserve the interstate commerce issue so that it can argue later that the Firm is not engaged in interstate commerce, it should be required to answer Interrogatory No. 8(b).

The basis for King & Spalding's claim that it is engaged in a "profession" and not an "industry" for purposes of Title VII should have been disclosed in response to Interrogatories Nos. 6 and 7, and is, in any event, without merit under the rulings of the Supreme Court in *Goldfarb v. Virginia State Bar*, 421 U. S. 773 (1975), and *Bates v. Arizona*, 433 U. S. 350 (1977), and the cases cited at page 2 above in which Title VII jurisdiction over law firm employment practices has been sustained.

Plaintiff's Interrogatory No. 10

> "With reference to the allegations of Paragraph 9 of the Eighth Defense that defendant had a "practice of not employing permanent associates," please state the following information:
>
> "(a) When and how was this policy adopted?
>
> "(b) Is this policy reflected by any documents, and, if so, please identify all such documents?
>
> "(c) (1) Has the defendant made any exceptions to the policy since its adoption? If so, (2) please describe each individual for whom an exception was made, (3) the reasons for the exception, and (4) identify all documents reflecting such reasons.

"(d) (1) Under defendant's policy, does an associate have the alternative of remaining as an employee of the firm? If so, please state (2) the length of time that the associate is permitted to remain an employee of the firm, and (3) any changes or modifications in the compensation, terms and conditions of employment that would apply to an associate who has been denied partnership that would not be applied to other associates who have not been refused admission to partnership.

King & Spalding's Response to Interrogatory No. 10

"King & Spalding objects to Interrogatory No. 10 on the grounds that said Interrogatory relates to a defense asserted by this defendant to plaintiff's claim and therefore is not properly within the scope of discovery as authorized by the Court's Order of April 15, 1980 [*sic*, April 23, 1980]. King & Spalding further objects to Interrogatory No. 10 on the grounds that said Interrogatory relates to the merits of this action, discovery on which has been stayed pending a ruling by the Court on this defendant's jurisdictional objections to plaintiff's claim."

Plaintiff's Reasons for Compelling an Answer

In the discussion of the significance of King & Spalding's acknowledged "up or out policy" at page 17, *supra*, plaintiff has demonstrated the relevance of that policy to the coverage issue before the Court. Plaintiff is plainly entitled to discovery as to the factual details of defendant's "up or out policy" for the purpose of demonstrating *how* that policy was applied and, thus, supporting her contention that termination of her employment was caused by defendant's decision to refuse to admit her to partnership on the basis of sex, and, therefore, constitutes unlawful employment discrimination covered by Title VII.

Plaintiff's First Notice to Produce Documents

Plaintiff's first notice to produce documents requested production by King & Spalding of all of the documents, identification of which was called for by plaintiff's first interrogatories.

King & Spalding's Response

> "King & Spalding objects to plaintiff's First Notice to Produce to the extent that it seeks the production of any documents other than the partnership agreement, and amendments thereto, in effect for King & Spalding during the period from January 1, 1972 through December 31, 1979, and the 1975 Memorandum, on the grounds that discovery of the contents, as opposed to the existence, of any of the other documents identified in King & Spalding's Responses to Plaintiff's First Interrogatories, would relate either to a defense asserted by King & Spalding to plaintiff's claim or to the merits of this action, and discovery as to King & Spalding's defenses and the merits of plaintiff's claim has been stayed by the Court's Order of April 15, 1980 [*sic*, April 23, 1980], pending a ruling by the Court on King & Spalding's jurisdictional objections to plaintiff's claim. Accordingly, King & Spalding states that the only documents which it will produce for plaintiff's inspection and copying at this time are the partnership agreement and amendments thereto, in force and effect during the period from January 1, 1972 through December 31, 1978 [*sic*, 1979], and the 1975 Memorandum.'
>
> King & Spalding's Response to Plaintiff's First Notice to Produce ¶ 4.

Plaintiff's Reasons for Compelling Further Production

King & Spalding has produced only incomplete copies of its partnership agreements from which information reflecting partnership points and capital contributions

has been censored. In the discussion related to Interrogatories Nos. 1(k) and 1(l) above, plaintiff has explained why information concerning partnership points and capital contributions contained in King & Spalding's various partnership agreements is relevant, and, therefore, discoverable by plaintiff. Although this information is undoubtedly sensitive, this fact does not exempt it from discovery under Rules 26 and 34, particularly in view of the comprehensive protective order entered by the Court on April 23, 1980, *at plaintiff's suggestion.* King & Spalding should be required to produce complete copies of its partnership agreements in effect during the 1972-1979 time period.

In the discussion of plaintiff's interrogatories, plaintiff has explained in detail the relevancy of the information sought by each interrogatory. Since the Rule 34 document request merely asks for production of the relevant documents reflecting the same information, the request is unquestionably proper for the same reasons the interrogatories are proper.

King & Spalding apparently contends that, by describing very *generally* some of its policies and procedures in a self-serving manner in response to an interrogatory, it is entitled to foreclose plaintiff from examining Firm memoranda and other documents which state those same policies and procedures. Since the contemporaneous documents may contain relevant information that is either not disclosed or is obscured by an artful lawyer's answer to the interrogatories—and indeed may even *contradict* some of defendant's answers—plaintiff is entitled under Rule 34 to examine the original documents, and is not re-

quired to accept defendant's self-serving descriptions of their contents.

CONCLUSION

Plaintiff respectfully urges that her motion to compel be granted and that King & Spalding be ordered (1) to answer plaintiff's first interrogatories enumerated above, and (2) to produce complete and uncensored copies of its partnership agreements and of all other documents identification of which was requested in plaintiff's First interrogatories and production of which was requested in plaintiff's First Notice to Produce.

Respectfully submitted,

/s/ Emmet J. Bondurant
/s/ Jeffrey M. Smith

Attorneys for Plaintiff

ORDER

This employment discrimination action under Title VII of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000e-2000e-17, is before the court on the motion of the Equal Employment Opportunity Commission (EEOC) to participate as amicus curiae in this action.

In support of its motion, the EEOC argues that this case presents an important question of statutory construction and that it is in the public interest for the commission to present its views to the court. In addition, the EEOC requests that it be made privy to the entire record in this case, including the material placed under seal by the consent protective order entered April 24, 1980, in order effectively to brief the issues.

Defendant opposes the motion on several grounds. It first argues that, since the EEOC issued an early right-to-sue letter and closed its file without undertaking investigation or conciliation, it should not now be permitted to enter the case. Defendant also argues that plaintiff is already adequately represented in this action and that permitting the participation of the EEOC might lead to disclosure of discovered material that would breach the court's protective order.

The decision whether and to what extent to allow the EEOC to participate in this case as amicus curiae is one within the court's sound discretion. *See, e. g., Alexander v. Hall,* 64 F. R. D. 152, 155 (D. S. C. 1974), and authority cited there.

Under the particular circumstances presented by this case, the court declines to afford the EEOC access to

that portion of the record that is sealed. Both parties are represented by eminently capable counsel who are well able to address the unique issues presented in this lawsuit.

The court welcomes the participation of the EEOC as amicus curiae to the extent that it may wish to address the legal issues involved in this case.

Accordingly, the motion of the EEOC to participate as amicus curiae is GRANTED in part and DENIED in part.

So ORDERED this 30th day of June, 1980.

/s/ Newell Edenfield
United States District Judge

KING & SPALDING'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL

NOW COMES KING & SPALDING, a partnership named as defendant in this action, and respectfully submits this Brief In Opposition To Plaintiff's Motion To Compell further answers to interrogatories and the production of additional documents.

ARGUMENT

I. TITLE VII DOES NOT APPLY TO THE ADMISSION TO PARTNERSHIP IN DEFENDANT.

Defendant has moved to dismiss plaintiff's employment discrimination claim for lack of subject matter jurisdiction. Pursuant to the Court's Order of April 23, 1980, the Court limited discovery in this matter to the threshold question of whether admission to partnership in a law firm is subject to review under Title VII. In addressing this issue, there are only two relevant questions: (1) Is a partner an "employee" of the partnership for purposes of Title VII? (2) Is admission to partnership a "term, condition, or privilege of employment" under Title VII? These are, defendant respectfully submits, the only two issues upon which discovery should be allowed at this time. While plaintiff proposes a number of other issues, such as whether defendant is a "constructive corporation," these issues are essentially unrelated to the threshold jurisdictional question before the Court and do not provide a basis for discovery.

The primary source for determining whether Title VII applies to partnership decisions is the statute itself, a source which plaintiff understandably ignores in her latest Brief. The statute speaks solely in terms of *employment* relationships, and prohibits discrimination with respect to (1) "compensation, terms, conditions, or privileges *of employment*," or (2) actions which would "adversely affect his status *as an employee*." 42 U. S. C. § 2000e-2 (emphasis added) The term "employment" is undefined, and the term "employee" is defined simply as one "employed by an employer." 42 U. S. C. § 2000e(f). As it is well established that terms used in a statute without definition are presumed to have their common, everyday meaning, *see U. S. v. National Broiler Marketing Association,* 550 F. 2d 1380, 1386 (5th Cir. 1977), *affirmed,* 436 U. S. 816 (1978); *Addison v. Holly Hill Fruit Products, Inc.,* 322 U. S. 607, 618 (1944), the terms "employee" and "employment" should be given their everyday meanings under Title VII, meanings which clearly exclude partners and admission to partnership.

Just as the statutory language itself belies plaintiff's efforts to classify the partners in defendant as "employees," the legislative history of the Act also indicates that plaintiff's argument is without merit. An exhaustive review of the legislative history of the Act by defendant has disclosed no support whatsoever for plaintiff's assertion that the terms "employee," "employ," and "employment" as used in the Act are intended to embrace partners in a law firm. The only relevant discussion of this issue which defendant has uncovered is a statement by Senator Clark, the Senate manager for the Act, in which Senator Clark explained that the term "employer" was intended to have

its "common dictionary meaning, except as expressly qualified by the Act." 110 *Cong. Rec.* 7216 (April 8, 1964) (copy attached as Exhibit "A").

Relying upon the absence of contrary legislative history, the courts have generally concluded that Title VII's definition of "employment" embraces the general common law concept, and that Congress did not intend for Title VII to apply to relationships which do not meet that standard. *See Dumas v. Town of Mt. Vernon,* 436 F. Supp. 866 (S. D. Ala. 1977), *modified on other grounds,* 612 F. 2d 974 (5th Cir. 1980); *Smith v. Dutra Trucking Co.,* 410 F. Supp. 513 (N. D. Cal. 1976), *affirmed,* 580 F. 2d 1054 (9th Cir. 1977), *cert. denied,* 439 U. S. 1076 (1979). By common law standards, of course, a "partner" is not an "employee" of the partnership. Rather, as the Sixth Circuit explained in *Burke v. Friedman,* 556 F. 2d 867, 869 (7th Cir. 1977):

> "[S]ection 6 of the Uniform Partnership Act defines a partnership as 'an association of two or more persons to carry on as co-owners a business for profit'. . . . Partners manage and control the business and share in the profits and losses. . . . In light of the foregoing, we do not see how partners can be regarded as employees rather than as employers who own and manage the operation of the business."

Accordingly, it is undisputed that both the language and legislative history of Title VII directly contradict plaintiff's position that partners are "employees" and make it absolutely clear that plaintiff's Brief represents nothing less than an invitation to this Court to engage in social engineering and judicial lawmaking. The Supreme Court has recently discouraged such efforts. *Roadway Express, Inc. v. Piper,* 48 U. S. L. W. 4836, 4838-39 (June 23, 1980).

In its responses to plaintiff's discovery requests, defendant attempted in good faith to provide plaintiff with all answers and materials which are relevant to the threshold jurisdictional issue, as discussed below. Defendant did not provide plaintiff with all answers and documents requested in plaintiff's counsel's letter of April 16, 1980, because defendant maintains that many of those interrogatories and requests for production are not related to the two questions identified above, the only questions relevant to the threshold jurisdictional question.

Plaintiff's Brief in Support of her Motion To Compel begins with an extensive discourse upon her view of the purposes of Title VII and an explanation of plaintiff's contentions. While defendant believes that plaintiff's arguments largely ignore the central questions of whether partners are "employees" and whether admission to partnership is a "term, condition, or privilege" of employment, her contentions and arguments require the following response.

1. *Plaintiff's focus upon the "institutional" nature of King & Spalding has nothing to do with the jurisdictional question before the Court.*

Plaintiff's Brief rests upon a classic "straw man" argument. Plaintiff argues at great length that defendant is a legal entity separate from the individual partners of the firm. Indeed, plaintiff suggests that the "crux" of defendant's position in its motion to dismiss is the argument that the firm and its partners are a single entity which cannot be separated. (Plaintiff's Brief, at 6). This is a blatant mischaracterization of defendant's position, and should not provide the basis for further discovery.

Nothing in defendant's Brief in Support of its Motion To Dismiss could reasonably be construed to express the view that, in dealing with outsiders, the firm is indistinguishable from the individual partners, or, as importantly, that this view is at all pertinent to its jurisdictional argument. Defendant is a partnership which exists under Georgia law, and, as such, the partnership is unquestionably an entity separate from the individual partners for many purposes. One need not search the digests of the United States Supreme Court to discover that, under applicable law, a partnership may sue and may be sued, *Ga. Code Ann.* § 75-312, may own property, *Ga. Code Ann.* § 75-101, and must file certain tax returns, § 6031, *Internal Revenue Code of 1954*. Defendant has, at no time, argued that it is not an entity separate and distinct from the individual partners.

Plaintiff somehow leaps from the fact that a partnership is, for some purposes, a legal entity separate from its partners to the assumption that the partnership "employs" the partners, the critical test for determining whether Title VII applies to partnership decisions, and it is in this leap that plaintiff's argument falls short. Nothing inherent in the fact that a partnership is, with regard to dealings with outsiders, an entity separate from the partners implies that the partnership "employs" the partners, any more than the fact that a corporation is separate from its shareholders necessarily implies that the corporation "employs" the shareholders.[1] Title VII only applies to

---

[1]A partnership can, of course, employ one of the partners under a management agreement or otherwise. In these exceptional circumstances, however, the salary of the employee is generally treated as an expense of the partnership which is deducted before determining the profit or loss which is shared by the partners *qua* partners.

employment relationships and, as described above, nothing in the Act or its legislative history suggests that a partner has an employment relationship with the partnership. Plaintiff's "separate entity" analysis has absolutely nothing to do with establishing the existence of an employment relationship.

2. *The "economic reality" test of employment urged by plaintiff fails to establish that a law firm partner is an "employee" under Title VII.*

Plaintiff also argues that, even if partners are not employees of the partnership in the common law sense, the "economic reality" of major law firm practice makes a partner the functional equivalent of a corporate employee who enjoys the benefits of a profit-sharing plan. Thus, plaintiff argues that the individual partners of King & Spalding "should be treated as 'employees' of the 'firm' for purposes of Title VII" (Brief at 5).

Relying upon this claim of "economic reality", plaintiff issues a bold invitation to this Court to engage in judicial legislation by asserting not that Title VII applies to partners, but rather that it *should* apply. Thus, plaintiff urges this Court to ignore the definitional provisions of Title VII, 42 U. S. C. § 2000e, and to adopt a broad "remedial" reading of the statute. Such an approach would not only bring business partners within the ambit of Title VII, but would also extend the Act to independent contractors and others who do not traditionally qualify as employees.

Plaintiff has not referred the Court to any authority for the proposition that a partner in a law firm is an "em-

ployee" of a business within the meaning of Title VII, and defendant has already explained that both the statutory language and the legislative history contradict this view. Plaintiff's reliance upon the Fifth Circuit opinion in *Pettway v. American Cast Iron Pipe Co.*, 494 F. 2d 211 (5th Cir. 1974), *rehearing denied*, 494 F. 2d 1296 (1974), is clearly misplaced. While *Pettway* did hold that, pursuant to Title VII, black employees were entitled to an equal right to serve upon the company's Board of Operatives, a co-trustee of the company's stock, the opinion provides no support for plaintiff's contention that the Fifth Circuit intended to hold that Title VII applies to acquisition of an ownership interest *per se*. The members of the Board of Operatives apparently remained operational employees of the company who received a set wage or salary. Moreover, the Board of Operatives was made up *exclusively* of employees. But the members of the Board of Operatives were not the owners of the stock voted, and were elected to serve on the Board on a rotating basis. No reasonable construction of the Fifth Circuit's Opinion supports plaintiff's conclusion that *Pettway* represents an extension of Title VII jurisdiction into the area of ownership of a business. Indeed, the legislative history of the Act clearly indicates that, barring the exceptional circumstances of *Pettway*, the Act does not apply to the election of the Board of Directors of a company, because directors are not "employees," and stockholders are not "employers." *See* 110 *Cong. Rec.* 7218 (April 8, 1964) (copy attached as Exhibit "A"). We submit that the statement of Justice Goldberg in *Bell v. Maryland*, 378 U. S. 226, 313 (1964), that the right of every person to choose his or her business partners on any basis satisfactory to him or her is a constitutionally protected liberty, is still good law.

In *Goldberg v. Whitaker House Cooperative, Inc.*, 366 U. S. 28 (1961), the Supreme Court held that the members of an incorporated cooperative were "employees" within the meaning of Section 3 of the Fair Labor Standards Act of 1938, but the Court pointed out that, under the terms of the Act, the term "employ" includes "to suffer or permit to work." 356 U. S. at 32. This definition of "employ" is clearly broader than the common law standard, and was not adopted by Congress when Title VII was passed.

Moreover, plaintiff's plea to this Court to ignore the common law and to include partners in a law firm as "employees" for Title VII purposes ignores a number of factors which clearly differentiate partners from employees. Partners, for example, stand in a fiduciary relationship with each other, one which legally requires "the strictest good faith" in their dealings with one another. *Ga. Code Ann.* § 75-201. Employees share no such relationship. Partners may, without the approval of any other person, bind the partnership in its dealings with third parties. *Ga. Code Ann.* § 75-302. Employees cannot. Partners have the legal right to examine the books and records of the firm. *Ga. Code Ann.* § 75-202. Employees do not. Partners cannot sue one another for damages arising from partnership transactions, their only recourse against one another being an equitable action for an accounting. *See Miller & Son v. Freeman*, 11 Ga. 654 (1900). Under federal law, "employees" are subject to withholding for taxes, § 3401 *Internal Revenue Code of 1954*, while partners are subject to the self-employment tax provisions of the Code. § 1402 *Internal Revenue Code of 1954*. Each of these distinctions reflects the fact that partners

are owners of the firm, who share in both profits and losses, and therefore cannot be characterized as employees who merely receive a salary for services rendered to the firm.

In light of the clear legal distinctions between partners and employees, and in the absence of any expression of congressional intent to include partners within the statutory concept of "employees", plaintiff's efforts at judicial legislation should be rejected out of hand.

3. *Plaintiff's argument that defendant is a "constructive corporation" has no merit.*

Apparently recognizing the weaknesses in her claim that partners in a law firm are "employees" of the firm, plaintiff devotes a substantial portion of her Brief to arguing that defendant's own organizational structure "closely resembles the organizational structure of ordinary business corporations" (Brief, at 10). As explained earlier, this focus upon the structure of the firm itself has no relevance to the threshold jurisdictional issue before the Court, an issue which necessarily turns upon whether an employment relationship exists *between* the firm and its partners. Moreover, plaintiff's comparison ignores the clear distinction between those carrying out the administrative functions within a corporation where such duties are fulltime, and attorneys carrying out certain administrative functions within a law firm where such activities are collateral to their regular and fulltime law practice.

In support of her argument that defendant is a constructive corporation, plaintiff sets forth eight individual elements which she contends make defendant closely akin

to an ordinary business corporation (Brief, at 10-14). Without arguing each of plaintiff's individual elements, it should be noted that they generally provide no basis for plaintiff's contention that defendant is more akin to a corporation than to a common law partnership, as shown below.

Plaintiff's first argument, that defendant has a written partnership agreement, is of no significance in establishing that the firm resembles a corporation. Under Georgia law, a partnership is inherently contractual in nature, and the Georgia Code specifically recognizes that the contract may be either written or parol. *Ga. Code Ann.* § 75-101. The fact that plaintiff's counsel's firm is small, personal, and unstructured, or that his former firm is large, impersonal, and highly structured, and that each chose to operate under parol rather than written contractual agreements in no way makes either firm more of a true partnership than defendant. Indeed, plaintiff's arguments would lead to the absurd conclusion that defendant's partnership decisions are subject to Title VII while similar decisions by Kilpatrick & Cody, for example, are not. Defendant doubts that any member of Congress ever envisioned this anomalous result.

Plaintiff's arguments that partners in defendant have no true ownership interest in the firm because of the provisions of the partnership agreement dealing with withdrawal and the policies of the firm regarding capital contribution (Brief, at 12-13) are also flawed. It is true that the partnership agreement protects the partnership from a division of firm assets at the time a partner withdraws, but this does not mean that the partner does not own a pro rata portion of the assets while he is a partner. Were

the partnership to vote to dissolve, each partner would receive a pro rata portion of the assets. Such is not true, of course, of a middle-level manager in the corporate context.

Plaintiff's claim that a partner has no true ownership interest in the firm also raises the interesting question of who, according to plaintiff, does own the partnership's assets. There is no stock in the partnership, only partnership interests. Thus plaintiff's argument, if carried to its logical result, would imply that the partnership's assets exist without any owner, an obviously absurd result.

Similarly, plaintiff's argument that defendant's partners are compensated on the basis of seniority (Brief, at 13-14) is both misleading and of no consequence. As defendant explained in its Answers to plaintiff's Interrogatories, compensation for partners is determined on an annual basis by the partnership itself. Response to Interrogatory No. 1(i)). Even if plaintiff's suggestions that partnership "points" are allocated largely upon a seniority basis, that "employees of large impersonal corporations receive periodic raises for seniority, and that government employees progress from GS-9 to GS-11" solely on seniority (Plaintiff's Brief, at page 14) are assumed, arguendo, to be true, these suggestions ignore the critical fact that partners share in both profits *and losses*.

If the federal government incurs a budget deficit, a GS-9 employee still receives his salary, as does a GS-11 employee. Similarly, if a corporation incurs an operating loss, management employees receive their salaries.[2] In

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[2]It should also be noted that higher management in corporations generally receive raises based on performance, not seniority, so this argument is truly specious.

a partnership such as defendant, however, there is absolutely no guarantee that any partner will receive any income whatsoever. As the Court in *Burke v. Friedman* noted, partners share in the profits and losses of the business, and therefore constitute owners, rather than employees. 556 F. 2d at 869. *See Ga. Code Ann.* § 75-102. Within this context, the fact that the degree of participation may be influenced by seniority by no means makes the firm the equivalent of a corporation.

Defendant submits that, had plaintiff truly desired to evaluate whether defendant was a true partnership as opposed to a "constructive corporation", plaintiff would have relied upon some established standard or test for distinguishing a partnership from a corporation, rather than upon the eight arbitrary elements which she discusses without any authority or support. Such an objective standard is set forth in the regulations developed by the Treasury Department dealing with unincorporated associations. *Treas. Regs.* § 301.7701-2. Surely this federal standard is a more appropriate test than the standard created out of whole cloth by plaintiff. The regulations establish that, for tax purposes, an unincorporated organization, such as a partnership, should not be treated as a corporation unless it has more "corporate characteristics" than "noncorporate characteristics." *Treas. Regs.* § 301.7701-2(a)(3). The relevant "corporate characteristics" set forth in the regulations are (1) continuity of life; (2) centralization of management; (3) limited liability; and (4) free transferability of interest. *Treas. Regs.* § 301.7701-2(b)-(e). Applying this four-pronged test to this case, defendant is clearly a true partnership, not a corporation.

There is no question but that there is no "free transferability of interest" on the part of partners in defendant,

particularly as that term is defined within the regulations. *Treas. Regs.* § 301.7701-2(e)(1). Indeed, Georgia law specifically provides that no partner may, by assigning his interest or otherwise, introduce a new partner without the consent of all other partners. *Ga. Code Ann.* § 75-204. Nor is there "limited liability" since the regulations provide that "[a]n organization has the corporate characteristic of limited liability if under local law there is no member who is personally liable for the debts of or claims against the organization." *Treas. Regs.* § 301.7701-2(d)(1). Under Georgia law each partner in Defendant is personally liable for the debts of and claims against the partnership. *Ga. Code Ann.* § 75-103.

It is also clear that defendant does not possess "centralization of management" as that term is used in the Regulations:

> "Centralized Management means a concentration of continuing exclusive authority to make independent business decisions on behalf of the organization which do not require ratification by members of such organization. Thus, there is not centralized management when the centralized authority is merely to perform ministerial acts as an agent at the direction of the principal. *Treas. Regs.* § 301.7701-2(c)(3).

While the Partnership Agreement of defendant does provide for a Management Committee, it should be recognized that the primary duty of the members of the Committee is the practice of law. Service on the Committee is in the nature of a collateral duty, dealing with matters of an administrative and ministerial nature in the operation of the firm. Even as to such matters, the decisions of the Management Committee can be reversed at any time by a 2/3 vote of the participating units of the partnership. (Memorandum of Agreement effective as of January 1, 1978,

¶¶ 7, 14.) Moreover, even if the Management Committee were, with respect to the partnership itself, considered to be a form of centralized management, it would not constitute the centralized management envisioned by the Regulations. Indeed, the Regulations specifically note:

> "[B]ecause of the mutual agency relationship between members of a general partnership subject to a statute corresponding to the Uniform Partnership Act, such *a general partnership cannot achieve effective concentration of management powers and, therefore, centralized management. Usually, the act of any partner within the scope of the partnership business binds all the partners; and even if the partners agree among themselves that the powers of management shall be exclusively in a selected few, this agreement will be ineffective against an outsider* who has no notice of it." *Treas. Regs.* § 301.7701-2(c)(4) (emphasis added).

The Georgia Code specifically provides that, with regard to an outsider, any partner may bind the partnership. *See Ga. Code Ann.* § 75-302. Thus, defendant lacks the centralization of management envisioned by the Regulations. As previously indicated, plaintiff overlooks that the membership of the Management Committee is made up entirely of attorneys whose primary function is the practice of law and who perform in an administrative capacity only collaterally.

Finally, defendant also lacks the characteristics of "continuity of life." While the Partnership Agreement provides that the partnership shall continue despite the withdrawal, incapacity, or death of any partner (Memorandum of Agreement effective as of January 1, 1978, ¶ 5(a)), Georgia law provides that a partnership is dissolved automatically by the addition, withdrawal, or death of one of its partners, *Ga. Code Ann.* § 75-107, and the Treasury Regulations explain:

> "An agreement by which an organization is established may provide that the business will be continued by the remaining members in the event of the death or withdrawal of any member, but such agreement does not establish continuity of life if under local law the death or withdrawal of any member causes a dissolution of the organization. Thus, there may be a dissolution of the organization and no continuity of life although the business is continued by the remaining members." *Treas. Regs.* § 301.7701-2(e)(2).

Based on this authority, defendant submits that it lacks continuity of life.

In summary, defendant lacks the four corporate characteristics which, for federal tax purposes at least, have long determined whether an unincorporated organization should be considered to be a partnership or a corporation. Under these circumstances, plaintiff's attempt to substitute an arbitrary standard, without authority or support, for determining whether the firm is a true partnership should be rejected, and the Court should conclude, as a matter of law, that defendant is a partnership for all purposes, and that partners are owners of the firm, not employees.

4. *Plaintiff's argument that admission to partnership is a privilege, term, or condition of employment should be rejected.*

In its Brief in support of its Motion To Dismiss, defendant explained that considering admission to partnership to be a term, condition, or privilege of employment is meaningless unless Title VII also applies to the relationship and interactions among the partners. (Defendant's Brief, at 15). Absolutely nothing in plaintiff's Brief responds to this point. Rather, plaintiff focuses upon an extension of the proposition that the "prospect for promo-

tion" may constitute a term or condition of employment. Clearly, so long as the employee remains an employee, this is true. As explained earlier, however, admission to the partnership is not a promotion within the employment context. Rather, the employee, upon admission to the partnership, ceases to be an employee and becomes an owner in the firm. The NLRB cases cited by plaintiff, which deal with promotion from one employment position to another employment position, are wholly inapplicable to this case.

5. *The termination of plaintiff's employment pursuant to defendant's facially neutral long-standing policies does not provide a basis for jurisdiction over the partnership claim.*

Apparently forgetting that the issue before the Court at this time is limited to whether or not a refusal for any reason to change plaintiff from the status of an associate (employee) to that of a partner (employer) is within the scope of Title VII, plaintiff indulges in such prejudicial language as referring to being "involuntarily terminated" from her employment as an associate of the defendant law firm. Plaintiff knows full well that, like all associates of defendant, she had only a contract at will under Georgia law, which could be terminated at any time, with or without cause, by either party. In any event, that issue is not before the Court at this time.

Plaintiff contends that her employment was involuntarily terminated under defendant's established policy that an associate who is denied admission to the partnership is expected to eventually leave the firm, and contends that her termination provides a basis for this Court's jurisdiction over her partnership claim. We submit that this argument is without merit. This argument does not ad-

dress the question of whether Title VII coverage extends to partnership admission decisions. It only addresses the validity of defendant's "up or out policy." There is in plaintiff's Brief, however, no allegation that the termination of her employment was in itself discriminatory. Indeed, plaintiff directly acknowledges that the policy pursuant to which she was terminated is an established policy of the firm which is applied on neutral terms (Plaintiff's Brief, at 1), and that the very same policy affected two male associates in her own class. Certainly this argument does not justify an expansion of Title VII jurisdiction.

Furthermore, the Supreme Court has established that a facially neutral policy which gives present effect to a discriminatory decision does not, in and of itself, provide the basis for Title VII jurisdiction over that decision. *See United Airlines v. Evans*, 431 U. S. 553 (1977). Plaintiff seeks to invoke the jurisdiction of this Court solely because of a policy which is neutral in its operation but which, according to plaintiff, gave effect to a past act of discrimination. The *Evans* court specifically rejected such an argument, and plaintiff offers no reasons why *Evans* does not control her contention as well.

II. RESPONSE TO INDIVIDUAL ASPECTS OF MOTION TO COMPEL.

There is no justification for plaintiff's assertion that defendant has effectively "stonewalled" plaintiff's discovery requests. While objections have been asserted to a number of plaintiff's interrogatories, defendant has, subject to the objections, made answers to the appropriate interrogatories. The precaution of asserting such objections before answering is born of experience. Should

there arise an issue as to what was answered, at least there can be no contention that defendant has waived all objections to the interrogatory in question. As discussed below, the objections asserted by defendant are well-founded.

Moreover, we submit that there is no merit in the contention that defendant has submitted only "abridged" copies of the firm's partnership agreements. Even a cursory examination will disclose that the only omissions deal with the percentages of the profits allocated to the various partners, the percentages of capital contributions, the cost of certain remodeling of the firm's offices, and the names of two partners who had withdrawn from the firm. Defendant submits that such omissions deal with purely personal and private matters that obviously have no relevancy to the issue before the Court. In order to allay the concerns of opposing counsel, however, we tender with this Brief complete and unabridged copies of the partnership agreements in question for an *in camera* examination by the Court, with the understanding that if the Court deems such items to be in any way relevant to the issues before it, then these documents may be delivered to opposing counsel with no objection on the part of defendant.

1. *Defendant's General Objection No. 1 is well-founded.*

General Objection No. 1 indicates that discovery in this matter should be limited to the "Time Period" defined in plaintiff's interrogatories, i.e., 1972 to 1979. This limitation would, under any interpretation, allow plaintiff to obtain discovery of facts and events which occurred six years prior to the allegedly discriminatory event in

this case. Plaintiff suggests, without citing any authority, that such a limitation is unreasonable. Defendant submits that this limitation is in accord with generally recognized principles in Title VII litigation.

In *Georgia Power Co. v. EEOC*, 295 F. Supp. 950 (N.D. Ga. 1968), *affirmed*, 412 F. 2d 462 (5th Cir. 1969), Judge Smith limited discovery in a Title VII action to a five-year period prior to the alleged violation of the Act. In explaining this limitation, Judge Smith wrote:

> "Timewise there should be reasonable limitations also . . . whatever was done ten, twenty, or thirty years ago by an established company could not illustrate the violation of this new right created by Congress in 1964, nor would statistics of such age and vintage have relevancy or probative value. In such circumstances, the Court limits the demand to a five-year period prior to the alleged violation. Any date thus fixed is admittedly arbitrary. However, such period is deemed to be reasonable for the normal case absent some special showing of the need and relevancy of a longer period." 295 F. Supp. at 954.

Other cases have adopted this five-year rule, or a variation thereof. *See Cormier v. PPG Industries, Inc.*, 452 F. Supp. 594 (W.D. La. 1978) (five-year time limit); *Shelton v. Pargo, Inc.*, 13 F. E. P. Cases 1736 (W.D. N. C. 1976) (five-year limitation on general discovery, but allowing plaintiff to discover when blacks were hired into particular job lines); *Queen v. Dresser Industries*, 21 F. E. P. Cases 758 (D. Md. 1977) (upholding defendant's objection to providing information for the period prior to 1970); *EEOC v. Magnetics Division of Stang Industries*, 13 F. E. P. Cases 191 (W.D. Pa. 1976) (3½ year limitation on discoveries). In this case, plaintiff has made absolutely no showing of special need which would

justify an extension of the discovery period beyond the reasonable time period developed by Judge Smith. Plaintiff was the first female to be considered for partnership in the firm, and the one female associate employed by the firm prior to plaintiff was employed under unique conditions. Even if the Court were to determine that discovery with regard to this former employee's experiences with the firm were to be allowed, plaintiff is by no means entitled to general discovery regarding defendant's policies and practices prior to 1972.

2. *Defendant's General Objection No. 2 is well-founded.*

General Objection No. 2 is simply an objection to "identifying" documents in the context of the interrogatories, since plaintiff also requested that each document be produced. Plaintiff's Brief in support of her Motion To Compel appears to agree that such identification is not necessary if the documents are produced. (Brief, at 10). To the extent that the interrogatories answered by defendant called for the identification of documents, they were either identified or produced. For example, defendant identified the minutes of its partnership meetings and management committee meetings which exist, although defendant objected to the production of these documents. In short, defendant does not believe that there is any dispute at all on this issue.

3. *Plaintiff's Objection to Defendant's General Objection No. 3 can be resolved.*

Defendant has objected to the identification or production of any document protected from discovery by the attorney-client privilege and the work-product doctrine.

Defendant agrees with plaintiff that a defendant may not simply refuse to produce a privileged document without identifying the document sufficiently to allow plaintiff to contest the claim of privilege. Accordingly, defendant will agree to provide, through separate, confidential letter to plaintiff's counsel, with a copy to the Court, an identification of any document with regard to which defendant is claiming either the attorney-client privilege or protection of the work-product doctrine.

4. *Defendants objection to Interrogatories No. 1(c) and (d) is sound.*

Interrogatories 1(c) and 1(d) seek information about events which occurred and materials which might have been produced prior to 1972. As explained above, defendant submits that discovery should be limited to the period from 1972 to 1979. Moreover, the only ground set forth by plaintiff in support of her request for the information sought in 1(c) and (d) is that the answers might reveal that defendant has an institutional identity separate from that of the partners. As explained above, defendant does not contest that it has an identity separate from that of its partners. This identity, however, is wholly irrelevant to the question of whether a partner is an "employee" of the firm for purposes of Title VII.

5. *Defendant's response to Interrogatory No. 1(f) is appropriate.*

Defendant did not object to Interrogatory No. 1(f). Rather, defendant incorporated its response to a prior interrogatory, Interrogatory No. 1(e)(1). That response provided plaintiff with the information requested. Defendant submits that there is no dispute on this matter.

6. *Defendant's objections to Interrogatories Nos. 1(h), (i), and (j) should be sustained.*

Interrogatories Nos. 1(h) and (i) requested that defendant describe its "organizational structure" and provide certain information with regard to each committee, department, or administrative position of the firm. Interrogatory No. 1(j) sought the identification of minutes or documents maintained by the firm or its committees or departments. Defendant did provide plaintiff with substantial information regarding the structure of the firm, and identified the minutes which are maintained. Plaintiff submits, however, that a further response should be compelled and, in support of her contention, sets forth five arguments. Defendant responds to those arguments as follows:

(a) Despite plaintiff's protestations, a request that a business describe its "organizational structure" is vague. To the extent that plaintiff wants information regarding committees, departments, and administrative positions, as her interrogatories specifically requested, that information has, in large measure, been provided. To the extent that "organizational structure" implies something other than committees, departments, and administrative positions, defendant does not understand the term, and plaintiff has not attempted to explain it.

(b) Plaintiff's claim that defendant should be required to identify the members of its management committee prior to 1978 is an appeal to this Court to allow discovery on the merits. Indeed, plaintiff specifically alleges that those persons may have recollections of facts "pertaining to the operations, poli-

cies, structure and reporting relationships and procedures for selecting and admitting partners and determining their compensation". (Brief, at 27). These are matters which relate to the merits of plaintiff's claim, not to the threshold jurisdiction question upon which the Court has ordered discovery.

(c) Plaintiff's third and fourth arguments request this Court to compel the identification of documents defining the firm's administrative structure or constituting records maintained by a committee, department, or administrative partner of the firm. (Brief, at 27). Plaintiff's only reason for seeking such production is that the documents might show that defendant is managed and operates like a corporation. As explained earlier, the test of "centralized management" for determining whether an organization is a partnership or a corporation is one which rests on the duties and responsibilities of the partners and the partnership to outsiders, not internal agreements or procedures. *Treas. Regs.* § 301.7701-2(c)(4). Accordingly, plaintiff's contention that materials relating to committees and department might show that defendant is managed and operated like a corporation is without merit.

(d) Plaintiff's request for access to the minutes of the Management Committee and the partnership as a whole is also without merit. Plaintiff asserts that those minutes may reflect that the Management Committee makes virtually all of the decisions of the firm. Again, however, the test of centralized management is one which depends upon the relationship of the firm to outsiders, not agreements made by the

partners themselves. Accordingly, while defendant has advised plaintiff that minutes of the Management Committee and the partnership exist, the contents of those minutes are in no way relevant to plaintiff's "coverage" claim.

7. *Defendant's objections to Interrogatory No. 1(k) should be sustained.*

Interrogatory No. 1(k) requests detailed information regarding a new partner's capital contribution, the percentage of ownership of the assets of the firm acquired by a new partner, and the percentage of firm capital or assets which a new partner is entitled to receive upon withdrawal from the firm. Plaintiff asserts that this information is required to allow her to demonstrate that a new partner is not an "owner" of the firm. As explained earlier, the logical extension of plaintiff's argument is that no one owns the firm's assets, an absurd result. Moreover, the alternative proposed by plaintiff, that a partner is in fact an "employee" of the firm whose compensation is allegedly no more than a "salary" ignores the critical facts that a partner shares in both profits and losses. Under these circumstances, the amount of money contributed by an incoming partner and the percentage of ownership of the assets of the firm acquired by an incoming partner are wholly irrelevant to this litigation.

8. *Defendant's objection to Interrogatory No. 1(l) should be sustained.*

Interrogatory No. 1(l) requests detailed information regarding the procedures used by defendant to determine the compensation of partners. Plaintiff asserts that this

information is relevant to allow her to demonstrate that defendant's compensation system is very similar to the "impersonal seniority-based systems used by the federal government and many corporations to compensate their employees . . ." (Brief, at 31). As pointed out earlier, plaintiff's argument is inherently flawed. A partner shares in the profits *and losses* of the partnership. Thus, if the firm has no profit, a partner receives no income. Similarly, if the firm sustains a loss, each partner is responsible for his proportionate share of the loss. This sharing in losses distinguishes the partnership from any corporation or the federal government. Moreover, this critical distinction separates the partners from associates. Plaintiff's Brief in Support of her Motion to Compel, however, totally ignores this critical fact.

Plaintiff's suggestion that defendant created a new category of partners in 1979 who received a "less-than-full allocation" of partnership points also has no relationship whatsoever to the threshold question before the Court. Regardless of how many points an individual partner has, he still participates, to the extent of his points, in the profits *and losses* of the corporation. The fact that one partner has fewer points than another may reduce his income and his risk of loss, but it by no means renders this individual an "employee" of the partnership.

9. *Defendant's objection to Interrogatory No. 1 (m) should be sustained.*

Responding to Interrogatory No. 1(m), defendant acknowledged that it maintains professional malpractice insurance. Plaintiff asserts that she is entitled to know the monetary limits of such policies and argues that these

limits may demonstrate that the firm has eliminated the risk of unlimited liability for partners. This argument, however, only applies to those liabilities deriving from acts or omissions of the firm's attorneys in providing legal services. Unlimited liability for the debts and obligations of the partnership, such as the payment of associate salaries, would remain intact despite the amount of malpractice insurance maintained by the firm. It is this unlimited liability for the debts and obligations of the business which separates a partnership from a corporation and distinguishes the partners of the firm from the shareholders of a corporation. Furthermore, the existence of insurance coverage for malpractice by a partner affords no comfort to partners concerned about their professional reputation. Client relations and the growth of the firm are more related to the reputation and abilities of the partners than to the monetary limits of malpractice insurance. Accordingly, the amount of malpractice insurance maintained by the firm cannot in any way demonstrate that unlimited liability of partners does not exist, or that this fact should affect the scope of Title VII.

10. *Plaintiff is not entitled to identification of the documents requested in Interrogatory No. 5.*

Interrogatory No. 5 requests defendant to identify documents relating to a large number of categories, including evaluations of associate performance, criteria for advancement to partnership, compensation policies for legal personnel, and others. Defendant objected to the interrogatory on the grounds that it related to the merits of the action. In her Motion To Compel, plaintiff asserts that these documents might reveal that defendant's de-

cision-making process is "institutionalized and impersonal". Assuming *arguendo* that the documents would reveal an institutional and impersonal process, which Defendant denies, the process would nonetheless be that of a partnership, as demonstrated above. Plaintiff's discussion with regard to this interrogatory, as clearly as any aspect of her Brief, demonstrates the manifest confusion in plaintiff's mind over what constitutes a partnership and what characterizes the relationship among partners. None of the documents requested in Interrogatory No. 5 would demonstrate in any way that the partners in defendant do not participate in the profits and losses of the partnership and, absent such a demonstration, the documents could in no sense demonstrate that a partner is an "employee" of the firm.

With regard to Interrogatory No. 5(e), which seeks documents relating to equal employment practices of the firm, plaintiff's contention that such document might contain relevant admissions of fact or law is without merit. The question of whether Title VII extends to a legal partnership is one of subject matter jurisdiction. No admission by defendant could possibly confer jurisdiction upon this Court if Title VII itself does not confer such jurisdiction. Moreover, defendant submits that any internal documents related to equal employment practices are confidential and proprietary and are not subject to discovery. *See Banks v. Lockheed-Georgia Co.*, 53 F. R. D. 283 (N.D. Ga. 1971); *Sanday v. Carnegie-Mellon University*, 12 F. E. P. Cases 101 (W.D. Pa. 1975).

11. *Defendant should not be required to answer Interrogatories Nos. 6 through 8 in further detail.*

Interrogatories Nos. 6 through 2 of plaintiff's First Interrogatories relate to the question of whether defendant is a person engaged in industry affecting commerce. It is defendant's understanding that this Court's Order of April 23, 1980 limited discovery to the question of whether admission to a partnership was subject to jurisdiction under Title VII, a question to which Interrogatories 6 through 8 are unrelated. Moreover, even if plaintiff is entitled to a response to Interrogatories 6 through 8, an adequate response is provided by defendant in its answer to Interrogatory 8(a). Defendant's argument that it is not a person engaged in an industry affecting commerce is based upon the fact that the provision of legal services is a "profession," not an "industry". None of the information requested by plaintiff's Interrogatories 6 through 8 relates at all to this argument, but instead relates to how active defendant is in practicing its profession.

12. *Defendant's objection to Interrogatory No. 10 should be sustained.*

Interrogatory No. 10 seeks detailed information with regard to defendant's policy of not employing permanent associates. Plaintiff's Brief in support of her Motion To Compel clearly demonstrates that this information is only relevant to the *merits* of her underlying claim. Indeed, plaintiff argues that she is "entitled to discovery as to the facts or details of defendant's 'up-or-out policy' for the purpose of demonstrating how that policy was applied

and, thus, supporting her contention that termination of her employment was caused by defendant's decision to refuse to admit her to partnership on the basis of sex. . .". Since the information requested in Interrogatory No. 10 can only be relevant to the merits of plaintiff's claim, discovery of the information is improper at this time.

13. *Defendant should not be compelled to produce further documents.*

Defendant has produced copies of its Partnership Agreements to plaintiff's counsel omitting only the information regarding individual partnership points and capital contributions. In its answers to interrogatories, defendant also identified other documents, including the minutes of the partnership and the minutes of the Management Committee. Defendant has explained above that information regarding capital contributions, partnership points, and the contents of the minutes of the Management Committee and partnership are not relevant in any way to the threshold question of whether Title VII applies to admission to the partnership, and plaintiff's Brief provides no reasons for ordering the production of these documents.

Moreover, plaintiff's suggestions that defendant should be required to produce every document which it has identified is spurious. Defendant has identified certain documents because the fact that the documents *exist* might, in one way or another, relate to plaintiff's contention that the firm operates and functions like a corporation. The contents of those documents, however, is highly sensitive material and defendant submits that it should

not be obligated to produce the documents themselves unless and until plaintiff makes at least a *prima facie* showing that the firm is a "constructive corporation", and that this fact has some relevance to the threshold jurisdictional issue. Clearly, no such showing has been made at this time.

CONCLUSION

Plaintiff's Motion To Compel reflects the erroneous belief that a partnership somehow loses its identity as an organization in which the owners share in the profits and losses when the partnership reaches a certain size or gains a certain degree of structure. Defendant does not contest that, in dealing with outsiders, the firm is a legal entity separate and distinct from the individual partners, and plaintiff's assertion that broad-ranging discovery is necessary to prove this fact is accordingly without merit. This fact, however, has nothing to do with the threshold jurisdictional question of whether Title VII applies to the admission to partnership, a question which depends upon whether an employment relationship exists between partners and the firm. Plaintiff has asserted that the Act applies because partners in a law firm are "employees" for purposes of the Act. This contention, which defendant submits is contrary to the statutory language of the Act and the established principles of law defining the partnership relationship, is the only issue upon which discovery should proceed at this time. For this reason, defendant respectfully submits that plaintiff has been provided with the answers and documents to which she is

presently entitled and plaintiff's Motion To Compel Discovery should therefore be denied.

Respectfully submitted,
LOKEY & BOWDEN
/s/ Hamilton Lokey
/s/ Gerald F. Handley

Attorneys for Defendant,
KING & SPALDING

MOTION OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR MODIFICATION OF COURT ORDER GRANTING LEAVE TO PARTICIPATE AS *AMICUS CURIAE*.

The Equal Employment Opportunity Commission moves for modification of the court's order, dated June 30, 1980, which allows the EEOC to file a brief *amicus curiae* in this case but actually prevents it from giving meaningful assistance to the Court by denying all access to discovery. The Commission, in lieu of access to the entire record, moves for permission to obtain certain information—detailed below—crucial to the preparation of a brief.

MEMORANDUM IN SUPPORT

The issue before this court—whether Title VII prohibits discrimination with respect to promotion to partnership in a large law firm—requires factual analysis. As we intimated in our reply to King & Spalding's opposition, several theories of liability exist. Under *Lucido v. Cravath, Swaine & Moore*, 425 F. Supp. 123 (S.D.N.Y. 1979), liability may be predicated on facts adduced through discovery concerning Ms. Hishon's reasonable expectations for partnership consideration. In that case, the court cited plaintiffs' reliance on the firm's stated policy—which consisted of fairly considering associates for partner, hiring partners exclusively from within the firm, and discharging associates passed over for partner—to find the opportunity for promotion one of the "terms, conditions, or privileges of employment" or an "employment

opportunity" as to which Title VII prohibits discrimination. Alternatively, it may be argued that all King & Spalding partners are, in effect, employees, or that a newly selected partner holds a position at King & Spalding more consistent with the status of employee than of co-owner /co-manager of the firm. The feasibility of these arguments depends on factual analysis of information to which the Commission is not now privy, *e.g.*, the partnership's mode of operation and the difference, if any, between "junior" and "senior" partners in terms of responsibility, authority, compensation, tenure, and power.

Accordingly, we ask that we be allowed access to materials which reveal the following:*

1. King & Spalding's partnership agreement.
2. The responsibility, authority, compensation, and tenure of newly admitted and senior partners, respectively.
3. King & Spalding's stated criteria for selecting partners.
4. King & Spalding's stated policy regarding the length of time new associates are employed before being considered for partner.

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*The mode of access, of course, is committed to the court's discretion. The court may order King & Spalding to provide the information directly. Alternatively, if the information has been elicited from King & Spalding through answers to similar interrogatories or requests for documents, it is sufficient if the court authorizes access to copies in the possession of Ms. Hishon's counsel.

5. The mechanism by which King & Spalding selects partners, *e. g.*, by consent of all partners or by vote of a committee.

6. To the extent King & Spalding denied Ms. Hishon's allegations in her complaint, the firm's statement as to what representations were made to Ms. Hishon at the time of her initial interview and recruitment regarding opportunity for admission to partnership.

7. King & Spalding's stated policy regarding partnership selection, *e. g.*, whether it is firm policy to select partners exclusively from among associates employed at the firm and to terminate associates who are formally considered and rejected, for admission to partnership.

While we do not doubt the ability of private counsel to litigate this case effectively, we submit that the public interest in the question posed here—whether Title VII is powerless to prevent discrimination in partnership selections—requires that the Commission exercise its unique expertise and responsibility by providing the court with a meaningful complete answer. *See* Rule 24(b) (2), FED. R. CIV. P.; §§ 705(g) (6), 706(f) (1) of Title VII, 42 U. S. C. 2000e-4(g) (6), 5(f) (1). Allowing the Commission to do so will not prejudice the confidentiality which the parties seek to preserve. Only EEOC attorneys Prager and Reilly will examine King & Spalding's responses to the above inquiries, and the Commission's brief will be seen only by those persons identified in our previously filed reply.

If the court grants this motion, the Commission seeks permission to file its brief 30 days after the date of the

modified order or on the date established for the filing of plaintiff's brief, whichever is later.

Respectfully submitted,

LEROY D. CLARK
General Counsel

JOSEPH T. EDDINS
Associate General Counsel

LUTZ ALEXANDER PRAGER
/s/ Susan Buckingham Reilly
Attorneys

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
2401 E Street, N. W.
Washington, D. C. 20506
(202) 634-6150

July 11, 1980

DEFENDANT'S RESPONSE TO THE MOTION OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR MODIFICATION OF COURT ORDER GRANTING LEAVE TO PARTICIPATE AS AMICUS CURIAE

We submit that the Equal Employment Opportunity Commission has asserted no valid reason for this Court to modify its order of June 30, 1980 in order to make discovery in this case available to the commission. It is immediately apparent that the commission in its numbered requests for discovery goes far beyond what might be relevant to the threshold question of subject matter jurisdiction and seeks discovery as to the merits, contrary to this Court's order limiting discovery until the threshold issue is resolved. In this connection there is an interesting parallel between what the commission seeks and what the plaintiff seeks in discovery. Plaintiff has a right to be partisan. We question the "public policy" involved in the commission's partisanship. Apparently the commission is not interested in the basic legal question "Is admission to partnership covered by Title VII?" but rather in the question "Is admission to partnership at King & Spalding covered by Title VII?"

We submit that not only should the commission's motion for access to discovery be denied, but also the Court's permission for the commission to file a brief amicus curiae should be withdrawn because of developments in this matter since the commission filed its original motion to intervene, to-wit:

On June 24, 1980, plaintiff Hishon filed with the EEOC two further complaints of discrimination against defendant, contending that she was dismissed from her employ-

ment with defendant in retaliation for her filing her original complaint with the commission and that in further retaliation settlement negotiations relative to her original complaint were terminated. While defendant categorically denies both charges, and contends that the complaints are false and groundless, nevertheless the charges are pending before the commission which must, at least in theory, "exercise its unique expertise and responsibility" to act as the impartial arbiter of that dispute. The commission should not be permitted to wear two hats at the same time —(1) as judge of the plaintiff's claims before the commission and (2) as prosecutor of the plaintiff's claims before this Court.

Clearly there is a conflict of interest here, contrary to the ethical standards of the legal profession.

We submit that the motion of the commission to modify the Court's order of June 30, 1980 should be denied and that instead the permission heretofore granted to the commission to file a brief amicus curiae should be withdrawn.

Respectfully submitted,

LOKEY AND BOWDEN

By: /s/ Hamilton Lokey
/s/ Gerald F. Handley
Attorneys for Defendant

ORDER

This employment discrimination action is before the court on a motion by the Equal Employment Opportunity Commission (EEOC) for modification of the court's order of June 30, 1980. That order granted the EEOC's motion to participate in this action as amicus curiae, but denied it access to the non-public portion of the record. The EEOC now moves the court to grant it access to certain specified non-public information in the record, including defendant's partnership agreement, partners' compensation, various policies relating to partnership selection, and partners' responsibility, authority and tenure. Movant argues that it requires this information in order effectively to prepare a brief in this case. Defendant has filed a brief opposing this motion.

Although the court is sympathetic to the arguments advanced by the EEOC, the information sought to be disclosed through this motion is simply too sensitive for the court to permit an enlargement of its protective order in this action, absent defendant's agreement. Since defendant has vigorously opposed the EEOC's attempt to gain access to this information, it is clear that such agreement will not be forthcoming. The parties to this action have consented to placing the record under seal, and that agreement will not be disturbed absent a compelling justification.

In its brief the EEOC has cited Rule 24(b) (2) and several sections of Title VII, relating to its authority to seek permissive intervention in this action, as authority for enlarging the scope of the protective order. Those citations are inapposite to the EEOC's attempt to involve

itself in this action, however, since it has never sought to intervene but has only offered its services to the court as amicus curiae. For this reason, the court has not considered whether the EEOC should be permitted to intervene, under the guidelines appropriate to that determination, *see, e. g., United States Postal Service v. Brennan,* 579 F. 2d 188 (2d Cir. 1978), but only whether and under what conditions it may advise the court on the legal issues in this case. As noted in the order of June 30, 1980, that decision is within the court's sound discretion and it has exercised that discretion in a manner that it believes comports with its responsibilities to the parties to this action and to the public at large.

For the foregoing reasons, the EEOC's motion to modify the court's order of June 30, 1980 is DENIED.

So ORDERED, this 30th day of July, 1980.

/s/ Newell Edenfield
United States District Judge

UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action File No. C80-326A

ELIZABETH ANDERSON SISHON

vs.

KING & SPALDING

JUDGMENT

This action came on for consideration before the Court, Honorable NEWELL EDENFIELD, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged that plaintiff take nothing, that action be dismissed for lack of subject-matter jurisdiction and defendant KING & SPALDING recover of the plaintiff ELIZABETH ANDERSON HISHON its costs of this action.

Dated at Atlanta, Georgia, this 26th day of November, 1980.

BEN H. CARTER
Clerk of Court

By: /s/ Sheryl C. Holloway
Deputy Clerk

FILED AND ENTERED IN CLERK'S OFFICE
November 26, 1980
BEN H. CARTER, CLERK
By: /s/ Sheryl C. Holloway
Deputy Clerk